

EDO Principal Correspondence Control

FROM: DUE: / / EDO CONTROL: G20060039
DOC DT: 01/09/06
FINAL REPLY:

John L. Nau, III
Advisory Council on Historic Preservation

TO:

Chairman Diaz

FOR SIGNATURE OF : ** GRN ** CRC NO:

DESC:

Termination of Consultation on the Proposed
Private Fuel Storage Independent Spent Fuel
Storage Installation

ROUTING:

Reyes
Virgilio
Kane
Silber
Dean
Cyr/Burns
Schlueter, STP
Mallett, RIV

DATE: 01/12/06

ASSIGNED TO: CONTACT:
NMSS Strosnider

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action.

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Jan 11, 2006 12:03

PAPER NUMBER: LTR-06-0019 **LOGGING DATE:** 01/09/2006
ACTION OFFICE: EDO

AUTHOR: John Nau
AFFILIATION: DC
ADDRESSEE: Chrm. Nils Diaz
SUBJECT: Advisory Council on Historic Preservation's recommendations on NRC's termination of consultation on the proposed Private Fuel Storage ISFSI

ACTION: Appropriate
DISTRIBUTION: OGC, RF... encls to: EDO

LETTER DATE: 01/09/2006
ACKNOWLEDGED: No
SPECIAL HANDLING: EDO/OGC
NOTES: OCM #8259
FILE LOCATION: ADAMS

DATE DUE: **DATE SIGNED:**

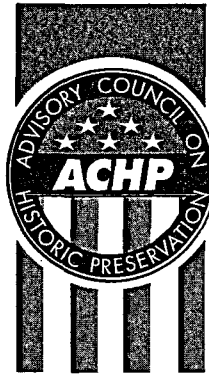
EDO --C20060039

8259
1-10-06
12:57 pm
JKA

John L. Nau, III
Chairman

Bernadette Castro
Vice Chairman

John M. Fowler
Executive Director



January 9, 2006

Honorable Nils J. Diaz
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Chairman Diaz:

On November 25, 2005, we received a letter from Jack R. Strosnider, Director, Office of Nuclear Material Safety and Safeguards, notifying us that the Nuclear Regulatory Commission (NRC) has terminated consultation on the proposed Private Fuel Storage (PFS) Independent Spent Fuel Storage Installation. The notification and supporting documentation were provided to the ACHP in accordance with the ACHP's regulations implementing Section 106 of the National Historic Preservation Act (NHPA). NRC anticipates making a decision soon on a license application from PFS for construction and operation of the proposed project on tribal lands of the Skull Valley Band of Goshute Indians, Utah.

From October 2000 to October 2001, NRC worked with the other cooperating Federal agencies, the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), and Surface Transportation Board (STB), to meet the requirements of Section 106. In 2003 and again in 2005 NRC sought to execute an MOA negotiated among the consulting parties, but was unable to execute the MOA and conclude the Section 106 process.

Background: Eight historic properties on land managed by the BLM will likely be affected by construction of the proposed rail line, if the project and railroad right-of-way are approved. They include a section of the California/Oregon National Historic Trail, a portion of historic U.S. Route 40, several segments of the "New" Victory Highway, later designated as U.S. Route 40, a portion of the "Old" Victory Highway, two segments of a late 1800's-early 1900s telegraph line, the Western Pacific Railroad, Deep Creek Road, and the road to Sulphur Spring/Eight-Mile Spring. The most significant adverse effect would be the destruction of a small portion of the Hastings Cutoff of the California National Historic Trail, which the proposed rail line would cross at approximately a right angle. The seven other historic properties, all linear features, pass in close proximity to or transect the proposed rail line on lands managed by the BLM. Following extensive consultation, terms for an MOA (see attached) were drafted which call for BLM to finalize, through consultation, a treatment plan for the eight affected historic properties and for properties that may be inadvertently

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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discovered during project construction. Treatments would include measures for the interim protection of the historic properties, funding for public outreach and education regarding the Emigrant Trail/Hastings Cutoff and the Road to Sulphur Spring, detailed recordation of portions of the historic roads, rail road and telegraph line that will be damaged or altered, and the curation of artifacts and documents.

The MOA was signed in June and July of 2005 by BIA, STB, the Skull Valley Band of Goshute Indians, and PFS. NRC added its signature in November 2005 and the National Park Service Long Distance Trails Office, and the Utah Historic Trails Consortium both signed onto the MOA as concurring parties. However, apparently due to a moratorium on BLM carrying out land management planning contained in the National Defense Authorization Act, NRC has been unable to persuade the BLM to execute the MOA at this time. For most of this time, the Utah State Historic Preservation Officer (SHPO) has been represented by a special Governor's appointee for this project. While he has participated in the consultation, the appointed SHPO will not sign the MOA. Without the signatures of these two key parties, BLM and the SHPO, the MOA cannot be executed.

The signatures that have been obtained on the MOA demonstrate support for the mitigation measures by key agencies, organizations that advocate for historic trails in Utah, and the Indian tribe on whose lands the project will be constructed, if approved. The ACHP has no objection to the substantive provisions of the MOA or to the treatment proposed for the historic properties. We therefore offer the following recommendation to assist NRC in concluding its responsibilities under Section 106 prior to reaching a licensing decision.

Recommendation: It is the ACHP's view that the draft treatment plan will be effective in minimizing and mitigating adverse effects to the eight historic properties if the project is approved. Because NRC has terminated consultation based on problems that do not reflect a disagreement among the consulting parties over the treatment of effects to historic properties, a commitment by NRC to condition the license on implementation of the terms of the MOA is a reasonable and appropriate means of concluding its responsibilities under Section 106 of the NHPA. The ACHP agrees with NRC's commitment to condition the license, if one is issued for this undertaking, on PFS carrying out the conditions for cultural resources in the Final Environmental Impact Statement (pp. 9-14 to 9-15) dated December 2001 (attached). Section 383 of the recently enacted National Defense Authorization Act designates the Cedar Mountain Wilderness Area in the area of the proposed rail spur. NRC's Condition 3.A addresses the possibility that the rail line may not be approved by requiring the MOA and treatment plan to be implemented only if a rail line is approved for construction.

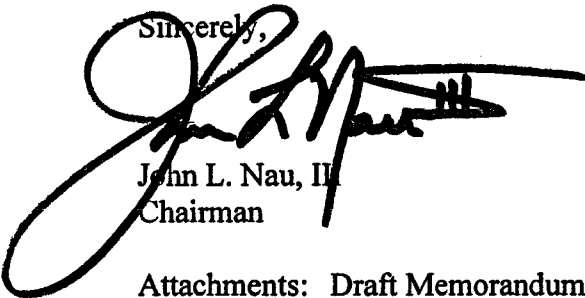
None of the other cooperating Federal agencies has informed the ACHP of a desire to terminate consultation for this undertaking. It is our understanding that BLM, the lead federal agency for Section 106 review, intends to continue consultation with STB, BIA, SHPO, and the other consulting parties pursuant to 36 CFR 800.6, and hopes to finalize and execute the MOA when a moratorium on land use planning is lifted. Should BLM approve an alternative means to transport spent fuel to the PFS site, it will need to consider the effects of that alternative on historic properties. The ACHP will support them in this effort, and will

continue to participate in consultation as BLM, STB, and BIA conclude their responsibilities through the execution of an MOA prior to issuing any required approvals for the project.

As the head of NRC, you are required to take into account these comments in reaching a final decision on the undertaking. The regulations implementing Section 110(1) of the National Historic Preservation Act direct that the head of the agency document this decision by (1) preparing a summary with rationale for the decision and evidence of consideration of the ACHP's comments and providing it to the ACHP prior to approval of the undertaking; (2) providing a copy of the summary to all consulting parties; and (3) notifying the public and making the record available for public inspection.

Thank you for requesting our comments regarding this undertaking. We appreciate the diligent and thorough manner in which your agency has addressed its responsibilities under the National Historic Preservation Act for this undertaking.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Nau, III", with a large, stylized flourish extending from the end of the signature.

John L. Nau, III
Chairman

Attachments: Draft Memorandum of Agreement
Proposed License Conditions

Final EIS for the Skull Valley Project, Mitigation Measures Environmental Condition #3. Cultural Resources

- A. Before beginning construction of a rail line from Skunk Ridge to the Reservation, PFS shall implement all the mitigation measures required in the Memorandum of Agreement (MOA) developed through the Section 106 consultation process (stipulations of the Agreement include Items B through G, below).
- B. If PFS identifies any previously unrecorded artifacts or other cultural resources during construction activities on land under the jurisdiction of BLM, PFS shall immediately cease construction in the immediate vicinity of the discovery, inform BLM of the identified resources, and arrange for evaluation of the resources by a qualified individual to be retained by PFS.
- C. If PFS identifies any previously unrecorded artifacts or other cultural resources during construction activities on the Reservation, PFS shall immediately cease construction in the immediate vicinity of the discovery, inform BIA and the Skull Valley Band of the identified resources, and arrange for evaluation of the resources by a qualified individual to be retained by PFS with the consent of the tribe.
- D. A qualified individual shall evaluate any resources identified during construction pursuant to Conditions 3.B and 3.C and shall recommend whether such resources are eligible for listing on the *National Register*.
- E. If resources eligible for listing on the *National Register* are identified pursuant to Condition 3.D, PFS shall describe, in detail, their characteristics and take the appropriate mitigation measures determined through NHPA required consultation.
- F. Upon providing a description of cultural resources required pursuant to Condition 3.E to BLM or upon a BLM determination that cultural resources identified during construction on lands under the jurisdiction of BLM are not eligible for listing under the NHPA, PFS may resume construction on such lands.
- G. Upon providing to BIA a description of the cultural resources required pursuant to Condition 3.E above or upon a BIA determination that cultural resources identified during construction on the Reservation are not eligible for listing on the *National Register*, PFS may resume construction on the Reservation.

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,
UTAH STATE HISTORIC PRESERVATION OFFICER,
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 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) (the cooperating Federal agencies) are considering approval of the Private Fuel Storage, L.L.C. (PFS) Project (hereafter the Project), described as the preferred alternative in the Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians (Skull Valley Band) and the Related Transportation Facility in Tooele County; the cooperating Federal agencies have agreed to participate jointly in the consultation process required by Section 106 of the National Historic Preservation Act (as summarized in Section 1.5 of the Final Environmental Impact Statement); and,

WHEREAS, the approval or disapproval of the Project would be documented in a separate Record of Decision (ROD) by each of the cooperating Federal agencies, according to its own rules, regulations, and requirements; and,

WHEREAS, the cooperating Federal agencies have agreed that BLM shall serve as the lead Federal agency for purposes of compliance with Section 106 of the National Historic Preservation Act; and,

WHEREAS, the cooperating Federal agencies have established the Project's Area of Potential Effect (APE), as defined at 36 CFR 800.16(d), as shown in Figures 1-2 and B.1-B.22 of the Class III Cultural Resource Inventory of the Private Fuel Storage Project Area in Skull Valley, Tooele County, Utah, (hereafter the Report); the inventoried area consisted of four study areas: (1) the Intermodal Transfer Facility comprising about 40 acres about 1.8 miles west of Timpie Junction, (2) the 400-ft-wide Skunk Ridge transportation corridor from Interstate 80 southward to the Reservation, (3) the proposed facility area and the site access road (about 1,000 acres) on the Reservation, and (4) an exploratory trench (about 6 acres), located along the northern base of Hickman Knolls on the Reservation; and,

WHEREAS, the cooperating Federal agencies have determined that the Project will have 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 (*National Register*) through application of the criteria at 36 CFR 60.4; a list of these properties and their eligibility and effect determinations are presented in Appendix 1; and,

WHEREAS, the cooperating Federal agencies have consulted with the Advisory Council on Historic Preservation (hereafter the "Council") pursuant to the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act to resolve the adverse effects of the Project on historic properties; and,

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

WHEREAS, the cooperating Federal agencies have consulted with the Skull Valley Band, a Federally recognized Indian tribe; the proposed facility is located on Reservation lands of the Skull Valley Band, and the Skull Valley Band 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 parties as abridging or debilitating any sovereign powers of the Skull Valley Band; affecting the trustee-beneficiary relationship between the United States and 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(c)(4), the cooperating Federal agencies have consulted with PFS, the applicant for the Project; and,

WHEREAS, pursuant to 36 CFR 800.3(f), 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, the Paiute Indian Tribe of Utah, Ohngo Gaudadeh Devia, the Utah Historic Trails Consortium, The Utah Chapter of the Oregon-California Trail Association, the National Park Service (Long Distance Trails Office), the Utah Chapter of the Lincoln Highway Association, and the Lincoln Highway Association regarding this Agreement; and,

WHEREAS, the cooperating Federal agencies, as part of the National Environmental Policy Act 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 National Historic Preservation Act in the course of consultation; and,

WHEREAS, signing of this Agreement does not constitute a ROD or approval of the Project, by any of the cooperating Federal agencies; and,

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

BLM, the lead Federal agency for implementation of the Treatment and Discovery Plans for the Project, shall ensure that the following measures are carried out:

I. Development of Treatment Plan (for Historic Properties)

PFS has prepared a draft Treatment Plan, entitled "Treatment Plan for Mitigation Measures for Eight Historic Properties" and shall submit a Final Treatment Plan to BLM for the treatment of effects of the undertaking on the historic properties identified in Appendix 1 of this Agreement.

a. The Final Treatment Plan will identify (1) all *National Register* eligible properties in the APE, (2) the nature of the effects to which each property will be subjected, and (3) the mitigation measures to avoid, minimize, or mitigate the effects of the Project agreed to by the parties. The Treatment Plan will be submitted by BLM 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 Fed. Reg. 44734-37), and will take into account the Council's publication, "The Council's Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites (*Federal Register Vol. 64, No. 95, May 18, 1999*)." Additionally, PFS has used, as a basis for the draft Treatment Plan (see Appendix 2), the proposed mitigation measures from the letter dated December 12, 2000, from NRC to PFS and will finalize the draft Treatment Plan taking into consideration the signatory and concurring parties' comments. Unless any signatory or concurring party objects to the final Treatment Plan within 30 calendar days after receipt of the plan, BLM 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 final 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 Final 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 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 or concurring party requests revisions to the Treatment Plan, BLM shall attempt to address the request and provide the parties to this Agreement 20 calendar days from receipt to review and comment upon the proposed revisions. Any timely objections to the Treatment Plan or the revised Treatment Plan by a signatory party shall be resolved in accordance with Stipulation VI. Any timely objections to the Treatment Plan or the revised Treatment Plan by a

concurring party shall be resolved by BLM in such manner as it deems appropriate, upon consultation with the signatory and concurring parties.

e. Treatment Plan Report Preparation and Review

Within 180 calendar days of completion of field work on the eligible sites pursuant to the Treatment Plan, PFS will submit a Treatment Report to the signatory and concurring parties incorporating all appropriate data analysis and interpretations. BLM will verify that all parties have received the report from PFS and upon receipt, the signatory and concurring parties will have 30 calendar days to review and comment to BLM on the report. Failure to comment within 30 calendar days will be presumed to represent concurrence with the report. BLM will provide comments to PFS within 45 calendar days of the time the report was received by the last party. PFS will then revise the report based on the comments, and submit the revised report to BLM. BLM will then have 30 calendar days to verify that the comments have been incorporated appropriately. Upon BLM concurrence that the treatment has been satisfactorily completed, BLM will notify PFS and the other cooperating Federal agencies. BLM will then allow construction to proceed in that area.

II. Construction

a. Upon issuance of the authorizations requested from the cooperating Federal agencies, BLM 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.

III. Discovery

a. A draft Discovery Plan for previously unencountered sites has been appended to the draft Treatment Plan and will be finalized taking into consideration comments received. 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 agency controlling the land can evaluate and, if necessary, authorize steps to mitigate impacts to the property, consistent with recovery procedures identified in the Discovery Plan. For example, if PFS identifies any previously unrecorded artifacts or other cultural resources during construction activities on land under the jurisdiction of BLM, PFS shall immediately cease construction within 200 feet of the property, inform BLM of the identified resources, and arrange for evaluation of the resources by a qualified individual. If PFS identifies any previously unrecorded artifacts or other cultural resources during construction activities on the Reservation, PFS shall immediately cease construction within 200 feet of the property, inform BIA and the Skull Valley Band of the identified resources, and arrange for evaluation of the resources by a qualified individual. Evaluation and mitigation will be carried out in consultation with the signatory and concurring parties to this Agreement as expeditiously as possible in accordance with 36 CFR 800.13(b).

b. As established in the Discovery Plan, 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 change in the Project design, PFS will notify BLM and BLM 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, BLM shall consult with and submit documentation to the signatory and concurring parties. If all parties agree to the adequacy of documentation or no adverse comment from parties other than the cooperating Federal agencies is received within 15 calendar days of receipt, BLM may assume concurrence.

c. Where a historic property will be affected and is an additional portion of a historic property 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 Treatment Plan. If all cooperating Federal agencies agree to the adequacy of documentation and the determination, or no adverse comment from parties other than the cooperating Federal agencies is received within 15 calendar days of receipt, BLM may assume concurrence.

d. Where a historic property will be affected and is an additional portion of a historic property as addressed in the Treatment Plan and the existing Treatment Plan is not applicable, or where a historic property will be affected but is not an additional portion of a historic property as addressed by the Treatment Plan, PFS shall consult with the signatory and concurring parties to develop a Supplemental Treatment Plan to mitigate the adverse effects to the historic property. PFS shall submit the Supplemental Treatment Plan to BLM, which will distribute 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 parties other than the cooperating Federal agencies is received within 30 calendar days of receipt, BLM may assume concurrence. Once finalized, the Supplemental Treatment Plan will be submitted by BLM to the Council for its information.

V. Confidentiality

a. BLM shall ensure that all sensitive information, as defined in Section 9 of the ARPA and Section 304 of the National Historic Preservation 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 National Historic Preservation Act and Section 9 of the ARPA, without the express written permission of BLM.

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, BLM shall consult with the objecting party to resolve the objection. The objection must be identified specifically and the

reasons for the objection documented. If BLM determines that an objection cannot be resolved, BLM shall forward all documentation relevant to the dispute to the Council.

- b. The Council will, within 45 calendar days of receipt of all pertinent documentation, either:
1. Provide BLM with a recommendation (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 reaching a final decision regarding the dispute.); or
 2. Notify BLM that it will comment pursuant to 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 cooperating Federal agencies in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject of the dispute.)
- c. BLM responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remains unchanged. BLM will notify all parties of its decision in writing before implementing that portion of the Project subject to dispute under this stipulation. The BLM's decision will be final.
- d. Any recommendation or comment 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. BLM responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.
- e. Should any concurring party to this Agreement object to any actions pursuant to this Agreement within 30 calendar days of initiation of that action (unless otherwise specified in this Agreement), BLM shall consult with the objecting party 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 BLM in such manner as it deems appropriate, upon consultation with the signatory and concurring parties.

VII. Effective Date

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

VIII. Amendments

If any signatory party 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 BLM and request an amendment. The parties of this Agreement will expeditiously consult to consider such amendment in accordance with 36 CFR 800.3(g).

IX. Termination

If the terms of this Agreement have not been implemented by January 1, 2010, this Agreement shall be considered null and void. In such event, BLM shall so notify the parties to this Agreement, and if it chooses to continue with the undertaking, shall reinitiate review of the undertaking in accordance with 36 CFR Part 800.

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. 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. This Agreement will remain in effect until all of its provisions have been carried out.

X. Failure to Carry Out Terms

Failure on the part of BLM to carry out the terms of this Agreement requires that BLM again request the Council's comments. If BLM cannot carry out the terms of this Agreement, it 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. Should PFS discover that it has failed to carry out the terms of this Agreement, PFS shall notify BLM. 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.

XI. 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 PARTIES:

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

By: _____
Date: _____

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

By: _____
Date: _____

U.S. NUCLEAR REGULATORY COMMISSION

By: *E. William Brink*
Date: *November 21, 2005*

U.S. SURFACE TRANSPORTATION BOARD

By: _____
Date: _____

SKULL VALLEY BAND OF GOSHUTE INDIANS

By: _____
Date: _____

UTAH STATE HISTORIC PRESERVATION OFFICER

By: _____
Date: _____

PRIVATE FUEL STORAGE, L.L.C.


By: _____
Date: _____

SIGNATORY PARTIES:

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

By: _____
Date: _____

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

By:  Acting Regional Director
Date: 6/2/05

U.S. NUCLEAR REGULATORY COMMISSION

By: _____
Date: _____

U.S. SURFACE TRANSPORTATION BOARD

By: _____
Date: _____

SKULL VALLEY BAND OF GOSHUTE INDIANS

By: _____
Date: _____

UTAH STATE HISTORIC PRESERVATION OFFICER

By: _____
Date: _____

PRIVATE FUEL STORAGE, L.L.C.

By: _____
Date: _____

SIGNATORY PARTIES:

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

By: _____
Date: _____

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

By: _____
Date: _____

U.S. NUCLEAR REGULATORY COMMISSION

By: _____
Date: _____

U.S. SURFACE TRANSPORTATION BOARD

By: Victoria G. Wilson
Date: June 9, 2005

SKULL VALLEY BAND OF GOSHUTE INDIANS

By: _____
Date: _____

UTAH STATE HISTORIC PRESERVATION OFFICER

By: _____
Date: _____

PRIVATE FUEL STORAGE, L.L.C.

By: _____
Date: _____

SIGNATORY PARTIES:

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

By: _____
Date: _____

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

By: _____
Date: _____

U.S. NUCLEAR REGULATORY COMMISSION

By: _____
Date: _____

U.S. SURFACE TRANSPORTATION BOARD

By: _____
Date: _____

SKULL VALLEY BAND OF GOSHUTE INDIANS

By: Sean W. Bearle CHAIRMAN
Date: 16/16/05

UTAH STATE HISTORIC PRESERVATION OFFICER

By: _____
Date: _____

PRIVATE FUEL STORAGE, L.L.C.

By: _____
Date: _____

SIGNATORY PARTIES:

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

By: _____
Date: _____

DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS

By: _____
Date: _____

U.S. NUCLEAR REGULATORY COMMISSION

By: _____
Date: _____

SURFACE TRANSPORTATION BOARD

By: _____
Date: _____

SKULL VALLEY BAND OF GOSHUTE INDIANS

By: _____
Date: _____

UTAH STATE HISTORIC PRESERVATION OFFICER

By: _____
Date: _____

PRIVATE FUEL STORAGE, L.L.C.

By: John D. Parby
Date: 5/27/05

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____
Date: _____

CONCURRING PARTIES:

CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION

By: _____
Date: _____

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

By: _____
Date: _____

UTAH HISTORIC TRAILS CONSORTIUM

By: _____
Date: _____

OHNGO GAUDADEH DEVIA

By: _____
Date: _____

THE NATIONAL PARK SERVICE (LONG DISTANCE TRAILS OFFICE)

By: *John T. Krabon*
Date: *June 9, 2005*

THE PAIUTE INDIAN TRIBE OF UTAH

By: _____
Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____
Date: _____

CONCURRING PARTIES:

CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION

By: _____
Date: _____

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

By: _____
Date: _____

UTAH HISTORIC TRAILS CONSORTIUM

By: Ron Andersen
Date: 14 Jun 2005

OHNGO GAUDADEH DEVIA

By: _____
Date: _____

THE NATIONAL PARK SERVICE (LONG DISTANCE TRAILS OFFICE)

By: _____
Date: _____

THE PAIUTE INDIAN TRIBE OF UTAH

By: _____
Date: _____

THE UTAH CHAPTER OF THE LINCOLN HIGHWAY ASSOCIATION

By: _____

Date: _____

THE UTAH CHAPTER OF THE OREGON-CALIFORNIA TRAIL ASSOCIATION

By: _____

Date: _____

THE LINCOLN HIGHWAY ASSOCIATION

By: _____

Date: _____

CULTURAL RESOURCES INVENTORY

I. Sites eligible for inclusion in the National Register of Historic Places.

The proposed project would constitute a visual impact on the viewshed of the original trail alignments at the points of intersection with the rail line.

<u>Site Number</u>	<u>Site Name</u>	<u>Effect Determination</u>	<u>Criteria</u>
42TO709	Emigrant Trail/Hastings Cutoff	Adverse	
42TO1409	U.S. Route 40	Adverse	A
42TO1410	"New" Victory Highway	Adverse	A, B, C
42TO1411	"Old" Victory Highway	Adverse	A
42TO1412	Western Union telegraph line	Adverse	A
42TO1413	Western Pacific Railroad	Adverse	
42TO1416	Road to Deep Creek	Adverse	
42TO1417	Road to Sulphur Spring or Eight-Mile Spring	Adverse	A

II. Sites not eligible for inclusion in the National Register of Historic Places.

42TO1343, Buried AT&T Telephone Line

42TO1414, Historic Habitation/Gas Station

42TO1415, Gas Station

42TO1187, Rock Alignment and Cairns