

**MEMORANDUM OF AGREEMENT**  
**AMONG UNITED STATES NUCLEAR REGULATORY COMMISSION, UNITED STATES BUREAU OF LAND MANAGEMENT BUFFALO FIELD OFFICE, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE WYOMING STATE HISTORIC PRESERVATION OFFICER, CHEYENNE RIVER SIOUX TRIBE, CROW TRIBE, EASTERN SHOSHONE TRIBE, FORT PECK ASSINIBOINE/SIOUX TRIBE, NORTHERN ARAPAHO TRIBE, NORTHERN CHEYENNE TRIBE, OGLALA SIOUX TRIBE, AND URANERZ ENERGY CORPORATION REGARDING MITIGATION OF ADVERSE EFFECTS TO HISTORIC PROPERTIES FROM THE NICHOLS RANCH ISR PROJECT IN CAMPBELL AND JOHNSON COUNTIES, WYOMING**

**WHEREAS**, this Memorandum of Agreement (MOA) addresses the federal undertaking regarding the issuance of a license for the Nichols Ranch *In-Situ* Recovery [ISR] Project pursuant to NRC's authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et. seq.* for purposes of NRC's compliance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 *et. seq.*; and

**WHEREAS**, the U.S. Nuclear Regulatory Commission (NRC), the Advisory Council on Historic Preservation (ACHP), the Wyoming State Historic Preservation Office (WY SHPO), and Uranerz Energy Corporation (Uranerz) (collectively hereafter called "Signatories") agree that site 48CA268 (Pumpkin Buttes Traditional Cultural Property [TCP]), 48CA6148, 48CA6748, 48CA6751, and 48CA6753 (hereafter collectively called "the affected historic properties") are historic properties eligible for listing on the National Register for Historic Places (NRHP) under 36 CFR § 60.4, the Pumpkin Buttes TCP, as an historic property of traditional religious and cultural significance to Indian Tribes, is eligible under Criteria A, B and D, and sites 48CA6148, 48CA6748, 48CA6751, and 48CA6753 are eligible under Criterion A; and

**WHEREAS**, pursuant to the ACHP's regulations implementing Section 106, the NRC acknowledges a federal agency's responsibility to make a reasonable and good faith effort to identify Indian Tribes and Native Hawaiian Organizations that shall be consulted during the Section 106 process and to provide the identified Indian Tribes and Native Hawaiian Organizations a reasonable opportunity to participate in the Section 106 process; and

**WHEREAS**, the NRC has contacted the Northern Arapaho Tribe (NAT), the Eastern Shoshone Tribe (EST), the Northern Cheyenne Tribe (NCT), the Fort Peck Assiniboine/Sioux Tribe (FPA/ST), the Oglala Sioux Tribe (OST), the Crow Tribe (CT), and the Cheyenne River Sioux Tribe (CRST), and has invited them to participate in development of this MOA and sign it as Invited Signatories, and they have chosen to participate; and

**WHEREAS**, the NRC contacted the Three Affiliated Tribes and the Blackfeet Tribe and invited them to sign this MOA as Invited Signatories, and they have chosen not to participate; and

**WHEREAS**, a portion of the Pumpkin Buttes TCP is located on federal land administered by the U.S. Bureau of Land Management (BLM) Buffalo Field Office, which will carry out certain responsibilities identified in this MOA; and

**WHEREAS**, the NRC contacted the BLM and invited them to participate in development of this MOA and sign it as an Invited Signatory, and they have chosen to participate; however, the BLM will meet its Section 106 obligations for BLM's undertaking regarding this project separately; and

**WHEREAS**, this MOA recognizes two types of Signatories to this agreement: Signatories and Invited Signatories. Signatories include any party who assumes responsibilities under this agreement. Invited Signatories have a demonstrated interest in the historic properties and participated in development of the document. However, the refusal of any Invited Signatory to sign this MOA does not invalidate the MOA; and

**WHEREAS**, the Signatories agree that the proposed project would have an adverse effect on the visual settings of these historic properties which contribute to their historic significance; and

**WHEREAS**, the mitigation measures for all identified historic properties for the proposed Nichols Ranch ISR Project in Campbell and Johnson Counties, Wyoming, are included in the Uranerz license application and this MOA; and

**WHEREAS**, in accordance with 36 CFR §800.6(a)(1), the NRC has notified the ACHP of its adverse effect determinations by providing documentation as specified in 36 CFR § 800.11(e), and the ACHP has chosen to participate in seeking ways to reduce or mitigate adverse effects and will be a Signatory to this MOA; and

**WHEREAS**, this MOA, consisting of ten (10) pages, and Appendix A, consisting of two (2) pages, represents the entire and integrated agreement between the Signatories and supersedes all prior negotiations, representations and agreements, whether written or oral, regarding Section 106 review of the current effects of the Nichols Ranch ISR Project on the affected historic properties.

**NOW, THEREFORE**, the Signatories agree that, the following mitigation measures and stipulations to mitigate the adverse effects of the Nichols Ranch ISR Project shall be implemented if the license application is approved.

## **STIPULATIONS**

NRC shall require as a condition of any license issued to Uranerz that Uranerz complies with all stipulations and other provisions in this MOA.

### **A. GENERAL MITIGATION MEASURES.**

1. Uranerz will provide for one qualified Tribal Monitor representing all Tribes to be present during the construction activities at the Hank Unit. Construction activities include: ground clearing and excavation activities for the Hank Unit satellite plant site, initial trunkline installation, and header house placement. Notification of the commencement of construction activities at the Hank Unit will be communicated to the Tribes at least one month prior to the start of construction.

2. The Tribes shall decide how they would like to select the representative of all Tribes who will serve as the Tribal Monitor. The position can be rotated through each of the Tribes, but not shorter than a two week period for each Tribal Monitor.
3. The Tribal Monitor will be compensated at the prevailing rate of a comparable job for the State of Wyoming during periods of active construction only. In the event of a suspension of construction activities Uranerz will be relieved of its obligation to compensate the Tribal Monitor until construction resumes.
4. The qualified Tribal Monitor will be considered a Contractor to Uranerz Energy Corporation and must comply with the Uranerz Energy Corporation Contractor/Guest Environmental, Safety and Health Guidelines and Site Requirements, OSHA, NRC, and any other State regulations. The Tribal Monitor must also agree to any NRC/State requirements imposed via license or permit. The Tribal Monitor will be expected to comply with the reasonable requests and instructions of Uranerz' Construction Manager. The Tribal Monitor will be permitted to observe construction, assist in cases of unanticipated discoveries, and to ask questions relating to construction activities and receive responses thereto, but he or she shall not participate in the construction activities and shall not impede or hinder construction activities in any way. In the event of any non-compliance by the Tribal Monitor with this paragraph the Tribal Monitor shall be required to leave the construction site and Uranerz shall be relieved of any further obligation to permit or compensate the attendance of that particular Tribal Monitor thereafter.
5. Uranerz will protect all identified historic properties within the proposed permit area from ground-disturbing activities. To protect those eligible sites located within or near the projected wellfield (specifically, sites 48CA6148, 48CA6748, 48CA6751, and 48CA6753), the applicant will delineate and fence these sites in consultation with the Tribal Monitor and a professional meeting the Secretary of Interior's Standards for Archaeology and History, thereby providing an appropriate buffer to ensure the ground-disturbing activities do not adversely affect the historic properties.

Uranerz will also protect all NRHP eligible historic properties within the proposed permit area from ground-disturbing activities (specifically, sites 48CA5391, 48CA6754, and 48CA6927). The applicant will delineate and fence these sites in consultation with a professional meeting the Secretary of Interior's Standard for Archaeology and History, thereby providing an appropriate buffer to ensure the ground-disturbing activities do not adversely affect the NRHP eligible historic properties.

6. If Uranerz determines that it must conduct ground-disturbing activities within the boundaries of a historic property listed in A5, the applicant will notify NRC, WY SHPO, WDEQ-LQD and, Invited Signatories. Uranerz will provide NRC information on the ground-disturbing activity, the adverse effect to the historic property, and a proposed mitigation/treatment plan. The NRC will consult with Signatories before making a determination of the proposed ground-disturbing activities adverse effect and submit it to the WY SHPO for concurrence. If an adverse effect is found, NRC will consult with the Signatories and review the proposed mitigation/treatment plan. Once an appropriate MOA among NRC, BLM, SHPO, CRST, CT, EST, FPA/ST, NAT, NCT, OST, and Uranerz Regarding Mitigation of Adverse Effects to Historic Properties, Campbell County, Wyoming.

mitigation/treatment plan has been agreed upon, the mitigation/treatment plan will be attached to this MOA as an appendix per Stipulation G. If concurrence on effect and/or the appropriate mitigation/treatment cannot be reached, the dispute will be resolved in compliance with Stipulation F.

7. Uranerz will instruct all employees, contractors, subcontractors, and any additional parties involved in the project not to search for, retrieve, deface, or impact archaeological materials (e.g., arrowhead hunting), and that it is a violation of the federal Archaeological Resources Protection Act (16 U.S.C 470aa-mm) to do so on federal or tribal lands.

## **B. DISCOVERIES.**

1. If previously unknown cultural resources are discovered at the site, Uranerz will immediately stop the ground-disturbing activities in the area of the discovery and will immediately notify the NRC and the WY SHPO. Uranerz will have any discovered cultural materials evaluated for NRHP eligibility by a professional meeting the Secretary of Interior's Standard for Archaeology and History. Documentation of the discovery and evaluation will be promptly provided to the NRC. The NRC will then consult with the WY SHPO on the determination of eligibility and adverse effect. If NRC determines that there is an adverse effect to a historic property, NRC will follow the procedure to resolve the adverse effect in accordance with Stipulation A6. Work may continue in other areas of the site; however work in the area of discovery may not resume until such time as any additional actions are completed or deemed unnecessary.
2. Depending on the location of the discovery, cultural resource(s) will remain under the ownership of the private landowner or the U.S. Government. Applicable federal, state or local laws will apply to the discovered cultural resources.
3. If human remains are encountered on private land, work will immediately stop in the vicinity of the discovery, the area will be secured, and Uranerz will immediately contact local law enforcement and the county coroner per W.S. 7-4-104. If the remains are not associated with a crime, then Uranerz will contact the NRC, WY SHPO, Invited Signatories and the landowner to further consult on the treatment of the remains. Uranerz will assure compliance with applicable federal, state and local regulations relating to burial discoveries through inadvertent, construction-related disturbance of graves.
4. If Native American human remains and associated funerary objects as defined in the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001), are encountered on federally administered land, Uranerz will immediately stop all work in the area and notify NRC, BLM, and WY SHPO. BLM will be responsible for compliance with the provisions of NAGPRA on Federal land.

**C. EXCLUSION AREAS.**

1. No ground disturbing activities will occur on the tops and sides of site 48CA268. The tops and bases of the relevant buttes are defined as follows, based on 1:24,000 USGS topographic quadrangles for the area:

North Middle Butte: Top = 6,000-ft contour line; Base = 5,500-ft contour line  
South Middle Butte: Top = 5,920-ft contour line; Base = 5,500-ft contour line

And, within the physical boundaries of sites 48CA6148, 48CA6748, 48CA6751, and 48CA6753.

**D. SITE SPECIFIC MITIGATION MEASURES.**

1. A summary of specific mitigation measures regarding the project area within a two mile radius from the outer boundary of the Pumpkin Buttes TCP as described in C1 of this section and are located in Appendix A of this document.

**E. PERMITTING AND INSPECTIONS.**

1. NRC shall require as a condition of any license issued to Uranerz that Uranerz complies with the stipulations and other provisions in this MOA.
2. Any NRC license conditions will be enforced subject to the extent of NRC's regulatory authority and as NRC determines to be appropriate.

**F. DISPUTE RESOLUTION.**

Should any Signatory to this Agreement object to any action carried out or proposed by the NRC with respect to the implementation of this Agreement, the NRC shall consult with that Signatory party to resolve the objection. If the NRC after initiating such consultation determines that the objection cannot be resolved the NRC shall forward documentation relevant to the objection to the ACHP, including the NRC's proposed response to the objection. Within forty-five (45) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

1. Advise the NRC that the ACHP concurs in the NRC's proposed final decision, whereupon the NRC shall respond accordingly;
2. Provide the NRC with recommendations, which the NRC shall take into account in reaching a final decision regarding its response to the objection; or
3. Notify the NRC that the objection will be referred to the ACHP membership for formal comment and proceed to refer the objection and comment within forty-five (45) days. The resulting comment shall be taken into account by the NRC in accordance with 36 CFR §800.7(c)(4).

4. Should the ACHP not exercise one of the above options within forty-five (45) days after receipt of all pertinent documentation, the NRC may assume the ACHP's concurrence in its proposed response to its objections.

The NRC shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the NRC's responsibility to carry out all actions under this Agreement that are not the subject of the objection shall remain unchanged.

**G. AMENDMENT.**

1. Any Signatory to this MOA may request that it be amended, whereupon the Signatories will consult to reach agreement. Such amendment shall be effective upon the signature of all Signatories to this MOA, and the amendment shall be appended to the MOA as an Appendix.

**H. TERMINATION.**

1. Any Signatory to this MOA may initiate termination by providing written notice to the other parties of their intent. After notification by the initiating Signatory, the remaining Signatories shall have 60 business days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. If such consultation fails, the termination will go into effect at the end of the 60-day period, unless all the Signatories agree to a longer period.
2. In the event of termination, the NRC will comply with any applicable requirements of 36 CFR §§ 800.4 through 800.6 with regard to this individual undertaking covered by this MOA.

**I. DURATION OF AGREEMENT.**

1. This MOA shall remain in effect for 20 years from its date of execution by the Signatories (last date of signature), or until completion of the work stipulated, whichever comes first, unless extended by agreement among the Signatories.

**J. ANTI DEFICIENCY ACT.**

1. The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 U.S.C. §1341). If compliance with the Anti-Deficiency Act alters or impairs the NRC's ability to implement the stipulations of this Agreement, the NRC will consult in accordance with the amendment and termination procedures found in this Agreement.

**K. GENERAL PROVISIONS**

1. This MOA shall not be binding upon any party unless this MOA has been reduced to writing before performance begins as described under the terms of this MOA, and unless the MOA is approved as to form by the Wyoming Attorney General or his representative.
2. Should any portion of this MOA be judicially determined to be illegal or unenforceable, the remainder of the MOA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.
3. The NRC, BLM, ACHP, State of Wyoming, WY SHPO, NAT, EST, NCT, FPA/ST, OST, CT, and the CRST do not waive their sovereign or governmental immunity by entering into this MOA and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the MOA.
4. Each Signatory to this MOA shall assume the risk of any liability arising from its own conduct. Each Signatory agrees they are not obligated to insure, defend or indemnify the other Signatories to this MOA.

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Execution of this MOA by NRC, BLM, ACHP, WY SHPO, NAT, EST, NCT, FPA/ST, OST, CT, CRST and Uranerz Energy Corporation, the submission of documentation and filing of this MOA with the Council pursuant to 36 CFR §800.6(b)(1)(iv) prior to the Signatories' approval of the undertaking, and implementation of its terms, are evidence that NRC and BLM have taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

**SIGNATURES:** In witness thereof, the Signatories to this MOA through their duly authorized representatives have executed this MOA on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOA as set forth herein.

The effective date of this MOA is the date of the last signature affixed to this page.

**Signatories:**

United States Nuclear Regulatory Commission

By: /RA by A. Persinko Acting for/ Date: June 27, 2011  
Title: Larry W. Camper, Director  
Division of Waste Management and Environmental Protection

Advisory Council on Historic Preservation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: John Fowler, Executive Director

Wyoming State Historic Preservation Office

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Mary Hopkins, State Historic Preservation Officer

Uranerz Energy Corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Glenn J. Catchpole, President and Chief Executive Officer



Wyoming Attorney General's Office Approval as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: S. Jane Caton, Senior Assistant Attorney General

**Invited Signatories**

Cheyenne River Sioux Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Kevin Keckler, Chairman

Crow Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Cedric Black Eagle, Chairman

Eastern Shoshone Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Mr. LaJeunesse, Chairman

Fort Peck Assiniboine/Sioux Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: A.T. Stafne, Chairman

Northern Arapaho Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Kim Harjo, Chairwoman

Northern Cheyenne Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Leroy Spang, President

Oglala Sioux Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: John Yellow Bird Steele, President

U.S. Bureau of Land Management

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Joe Meyer, Acting Deputy State Director  
Resource Policy and Management

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Duane Spencer, Buffalo Field Office Field Manager

## **APPENDIX A**

### **SITE SPECIFIC MITIGATION MEASURES TO ADDRESS CONSTRUCTION LOCATION, SURFACE RECLAMATION, ACCESS ROADS, GATHERING PIPELINES, WELL LOCATIONS, POWER LINES, AND OTHER FACILITIES**

The following mitigation measures apply to all project specific activities that may occur within two miles of the base elevation of the Pumpkin Buttes TCP.

#### **I. Surface Reclamation**

All disturbed lands associated with the project, including access roads, pipelines, well locations, power lines, management facilities, etc. will be expediently reclaimed and reseeded in accordance with the project-specific reclamation plan provided in the NRC license application. The visual contrast of reclaimed lands will be minimized.

#### **II. Access Roads**

Wherever possible, existing roads will be utilized. In order to minimize visual contrast, roads will be placed outside areas containing dense patches of sagebrush and follow natural contours wherever practicable. The gravel surface of new roads will be a color that does not create a visual contrast to the surrounding topography.

#### **III. Pipelines**

All pipelines will be coridored next to or within roads, wherever possible. Pipeline corridors will use existing disturbance areas and will be placed outside areas containing dense patches of sagebrush where practicable.

#### **IV. Well Locations**

Wherever practicable, areas of existing disturbance will be used. To minimize visual contrast, well locations will not be placed in areas of dense sagebrush or other vegetation unless absolutely necessary. Brush hogging or other vegetation removal on drilling locations within areas of dense sagebrush or other vegetation will be feathered to reduce visual contrast and limited to 30 feet in diameter from each well. All above ground infrastructure related to well production will be painted in a color that best blends in with the surrounding topography. These colors are typically Covert Green (PANTONE for Architecture Color Guide 18-0617 TPX) or Carlsbad Canyon (Munsell Soil Color 2.5Y 6/2). It may be determined that different colors are required on a site specific determination based on visual assessment. The gravel surfaces surrounding the well locations, if any, will be a color that does not create a visual contrast to the surrounding topography.

## **V. Power Lines**

Wherever practicable, power lines servicing wells will be buried and buried power lines will be placed inside or within five feet of the trench utilized for pipelines when possible. Construction of over head power lines within two miles from the base elevation of the Pumpkin Buttes will be designed to reduce visual contrast. Any power line should use areas of existing disturbance whenever possible.

## **VI. Other Facilities**

All permanent above-ground structures (e.g., production equipment, tanks, etc.) not subject to safety requirements will be painted to blend with the natural color of the landscape. The color will simulate the standard environmental colors established by the BLM for visual resource management. These colors are typically Covert Green (PANTONE for Architecture Color Guide 18-0617 TPX) or Carlsbad Canyon (Munsell Soil Color 2.5Y 6/2). It may be determined that different colors are required on a site specific determination based on visual assessment. The gravel surfaces surrounding all permanent above-ground structures will be a color that does not create a visual contrast to the surrounding topography.