

**Advisory
Council On
Historic
Preservation**

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Reply to: 12136 West Bayaud Avenue, #330
Lakewood, Colorado 80226

February 15, 2001

Mark S. Delligatti
Senior Project Manager
Spent Fuel Licensing Section
Office of Nuclear Material Safety and Safeguards
Nuclear Regulatory Commission
Washington D.C. 20555-0001

RE: *Draft Memorandum of Agreement (MOA) for the Private Fuel Storage, Limited Liability Company (PFS) Proposed Spent Fuel Storage Installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians.*

Dear Mr. Delligatti:

On December 5, 2000, we received your letter transmitting the draft Memorandum of Agreement (MOA) for the above referenced undertaking. We have reviewed this draft, and follow up documentation that was provided us by Melanie Wong of your staff. We offer the following comments for your consideration in finalizing the MOA:

1. The agreement must designate a single lead federal agency, which will be ultimately responsible for ensuring that the terms of the agreement are carried out. As the Nuclear Regulatory Commission appears to be coordinating Section 106 review for the four participating Federal agencies, we recommend that NRC be designated as lead, for purposes of Section 106. A WHEREAS clause should briefly explain that the cooperating Federal agencies have agreed that NRC shall serve as the lead federal agency for purposes of compliance with Section 106 of the National Historic Preservation Act. Also, other sections of the MOA should be revised to replace the phrase "*the cooperating Federal agencies*" with the NRC. If the parties desire, tasks described in the stipulations section of the agreement may be assigned to another signatory agency (such as the Bureau of Land Management) where appropriate.

2. The 2nd WHEREAS clause references figures in the cultural resources inventory report in defining the area of potential effects (APE). The referenced figures are at a very small scale, and therefore should be supplemented with a verbal description (e.g., right-of-way width along the low transportation corridor, legal descriptions and dimensions of other areas investigated), perhaps in an attachment to the agreement. Also, the APE definition should accurately reflect any modifications made since completion of the inventory report.

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3. Please revise the 2nd WHEREAS clause on page 2 to read: *"WHEREAS, the proposed private fuel storage facility is located on reservation lands of the Skull Valley Band of the Goshute Indians (Skull Valley Band), and NRC has consulted with the Skull Valley Band, a federally recognized Indian tribe, organized under Section 16 of the Indian Reorganization Act of 1934, which...."*
4. Fourth WHEREAS on page 2: A better reference for consultation with tribes is 36 CFR 800.3(f)(2).
5. Fifth WHEREAS clause on page 2: the correct reference for consultation with applicants is 36 CFR 800.2(c)(4).
6. The 7th and 8th WHEREAS clauses on page 2, regarding the class III inventory and consultation regarding adverse effects are unnecessary. We recommend deleting them.
7. The opening statement after the title "Stipulations" should state: *"The NRC shall ensure that the following measures are carried out."*
8. Stipulation I, and the rest of the agreement, should use terms that are defined in the regulations wherever possible. In the title of Stipulation I, use "Historic Properties" instead of "eligible resources." We also recommend that Stipulation I.a. open with the following statement, to clarify who is responsible for developing the plan: *"[identify either NRC or PFS] shall develop a treatment plan for the treatment of effects of the undertaking on the historic properties identified in Enclosure 1 of this agreement."*
9. Also, in Stipulation I.a, the first sentence should be revised to read: *"The Treatment Plan will identify (1) all National Register eligible properties in the APE, (2) the nature of the effects..,"* and the reference to the Council's publication, "Treatment of Archaeological Properties" should be changed to our more current guidance on archaeological data recovery: *"The Council's Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites (Federal Register Vol. 64, No. 95, May 18, 1999)."* We also recommend that this stipulation state that NRC (or PFS) shall use as a basis for the Treatment Plan the proposed mitigation measures from the letter dated December 12, 2000, from NRC to Private Fuel Storage. Rather than referencing the letter in the MOA, it would be best to include the three page outline of mitigation measures as an enclosure to the MOA.
9. As we understand it, archaeological data recovery is not currently proposed as mitigation for any historic properties in the APE. Stipulation I.B. may therefore not be necessary. However, if you wish to retain this in case archaeological data recovery should become necessary, the opening sentence of Stipulation I.B., should be revised to read: *"Where archaeological data recovery is recommended for the treatment of historic properties, the Treatment Plan shall specify..."*
10. Stipulation I.d.: We recommend the following rewording: *"If any signatory or concurring party requests revisions to the Treatment Plan, NRC shall attempt to address the request and*

provide the parties to this Agreement 20 days from receipt to review and comment on the proposed revisions. Any timely objections to the Treatment Plan or the revised Treatment Plan shall be resolved in accordance with Stipulation VII."

11. Stipulation I.e: please reword this stipulation to identify who is responsible for preparing the report and submitting it to the other parties for review.

12. The measures for addressing discoveries, Stipulation IV, should be consistent with the Cultural Resource Conditions contained in the Draft EIS (page 9-11 to 9-12). The proposed consultation with "the cooperating Federal agencies" in this draft MOA might prove too cumbersome for the short turn around needed to address discoveries that occur during project construction. The more specific consultation with BLM or BIA, which is included in the draft EIS appears more manageable.

13. Stipulation VII, Dispute Resolution: please strike the word "*signatory*" from the first sentence. Concurring parties should have the same right to invoke the dispute resolution clause as the signatory parties.

14. VIII, Effective Date: This stipulation is somewhat unclear regarding when the agreement goes into effect. It should state that the agreement shall become effective when executed by the NRC, BIA, BLM, STB, Skull Valley Band of the Goshute Indians, and the Council.

15. Stipulation X, Termination: please delete the sentence reading "*This agreement will remain in effect until construction of the rail line and PFS facility ceases.*" The agreement should remain in effect until all of the its provisions have been carried out. Rather than stating that the agreement will terminate upon completion of construction, we recommend including a date, after which the signatories will consult to determine whether the agreement should be amended, terminated, or remain in force, as described in the closing sentence.

16. Headings for the signature pages should read: "Signatory Parties," and "Concurring Parties."

Thank you for providing us an opportunity to review the draft MOA for this undertaking. If you have any questions or concerns regarding these recommendations, please contact Carol Gleichman of our staff at (303) 969-5110.

Sincerely,

A handwritten signature in black ink, appearing to read 'DKlima', written over the word 'Sincerely,'.

Don L. Klima
Director
Office of Planning and Review