

DRAFT

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) propose to approve 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 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 Enclosure 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 Secretary of the Interior 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, and the Utah Historic Trails Consortium 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,

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 the Project, shall ensure that the following measures are carried out:

I. Development of Treatment Plan (for Historic Properties)

PFS shall submit a Treatment Plan for the treatment of effects of the undertaking on the historic properties identified in Enclosure 1 of this Agreement to BLM.

a. The 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 shall use, as a basis for the Treatment Plan, the proposed mitigation measures from the letter dated December 12, 2000, from NRC to PFS (see Enclosure 1 of this Agreement). Unless any signatory or concurring party objects to the 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 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 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 pursuant to the Treatment Plan, PFS will submit a report to BLM incorporating all appropriate data analysis and interpretations. BLM will submit the report to signatory and concurring parties who will be provided 30 calendar days to review and comment on the report. Failure to comment 30 calendar days after receipt of the report will be presumed to represent concurrence with the report.

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.
- b. Where eligible properties are present, PFS will notify BLM when treatment and the Treatment Plan Report are completed for an area. Within 45 calendar days of receiving the Treatment Plan Report, BLM will review the document. 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.

III. Discovery

- a. A Discovery Plan for previously unencountered sites will be appended to the Treatment Plan. 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. 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, 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, 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. If cultural properties are encountered on Federal lands, the agency controlling the land will be consulted to develop appropriate mitigation measures.
- c. 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, who 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 material, 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 their decision in writing before implementing that portion of the Project subject to dispute under this stipulation. The cooperating Federal agencies' 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, 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 when executed by the authorized representatives of the signatory parties. This Agreement will 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

Prior to termination, the signatory parties will consult to determine whether this Agreement should be amended, terminated, or remain in force, after which the Agreement will automatically terminate unless it is amended or the expiration date extended by written agreement of the signatory parties. 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, they 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, until such time as the commenting process has been completed. 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: _____
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: _____

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: _____