

TRIP REPORT/CR/85/08/23

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MEMORANDUM FOR: File

FROM: Catherine F. Russell
Project Manager, State/Tribal Activities

SUBJECT: TRIP REPORT - NATIONAL CONGRESS OF AMERICAN INDIANS
NUCLEAR WASTE REVIEW COMMITTEE MEETING - ALBUQUERQUE, N.M
AUGUST 15 - 16, 1985

The National Congress of American Indian's (NCAI) National Indian Nuclear Waste Review Committee, comprised of representatives from tribal governments that may be affected by the siting and transportation of high-level radioactive waste, held its most recent meeting in Albuquerque, New Mexico on August 15-16, 1985. The meeting was held in Albuquerque in response to requests from several tribal representatives from the southwest region. Since one of the three potential repository sites is located in the El Paso area of Texas, the tribes of that area wanted information on the Nuclear Waste Policy Act and the activities of the various federal agencies involved in its implementation. A copy of the meeting agenda is attached (Attachment 1).

Mr. Robert Holden, NCAI Natural Resources Researcher, began the meeting with introductions by all of the participants, and a brief summary of the NRC/DOT transportation seminar that had been held in Chicago the week before. Holden said the meeting was beneficial because it sensitized some of the NRC and DOT management to the concerns and the role of the Indian tribes under the NWPA. Holden emphasized the need for routing maps of "Indian Country" belonging to tribes potentially affected by transportation of radioactive materials. He was also critical of the Bureau of Indian Affairs, reprimanding them for not taking an active role on behalf of the tribes under the NWPA. Holden said BIA should be funding tribes so they could obtain technical services, and taking the lead to get clarification of some of the language of the NWPA concerning Indian tribes.

The next presentation was given by William Sprecher, representing the Department of Energy's Policy Office at Headquarters. Mr. Sprecher gave an overview of the DOE's current activities under the NWPA. He was asked by a tribal representative about who would be legally responsible in the federal government if the Columbia River were to become contaminated. Sprecher said that Price-Anderson provisions cover NWPA activities and DOE's position is that the government is legally responsible for compensation. He was then asked, what if the loss was cultural. Sprecher said he was unsure, that the DOE had not yet dealt with how to provide compensation for non-monetary losses but that individuals and groups were always free to file lawsuits. The tribes indicated that, often, no money was available for lawsuits, and one of the

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tribal attorneys pointed out that under the new "Superfund" legislation, it is unlawful for citizens to file suit. Sprecher replied that the provisions of the NWPA allowed people with legitimate problems to use the process.

Mr. Russell Jim, Nuclear Waste Program Manager for the Yakima Indian Nation, told Mr. Sprecher that "it was unfortunate that you are not familiar with the tribes or their programs, the way some other DOE employees are such as Tom Tinsley, Lee Olson or Ben Easterling. Many people here have travelled a long way at their own expense in order to learn," said Jim. Instead, the burden is on the tribes to continually teach each individual government employee about the indigenous peoples' history, culture and concerns. Many of the DOE's answers to questions from the tribes are evasive and emphasize overly simplistic truths." Mr. Jim said the "logic of the uninformed" is such that they feel they can bide their time with the tribes and then go directly on the Reservation to begin testing. This is not the case, emphasized Jim, "we can stop them (Government) from entering our Reservations to do exploration." Mr. Jim concluded by stating that the tribes had created "stonewalling" and they have the time to do it and will do it if they continue to be treated by the federal government, particularly BIA and DOE, in such an inequitable manner.

Mr. Sprecher, DOE, then requested that the tribes put together a list of questions and concerns they have regarding both the first and second repository programs. He indicated this would be very helpful to DOE. Russell Jim told Sprecher that the tribes had "repeatedly told DOE of our concerns," but have yet to get responses. Mr. Carl Sampson, Umatilla Tribal Council Member, said his tribe is beginning negotiations with DOE on their consultation and cooperation (C&C) agreement. When he asked DOE what would happen if there were provisions the tribe could not agree to, DOE responded that "things would go on as usual." Sampson said he would like to caution the tribes to be careful in their dealings with DOE, because his experience is that "they are not above board."

The next presentation was by Thomas King, Resource Preservation Director, Advisory Council on Historic Preservation. Mr. King said his organization is composed of a 19-member Council, with a staff of 34 nationwide. The Council is not part of DOE or DOI. When the federal government, or any other entity, does anything that affects a historic place, they must come to the Council to discuss the proposed action as well as to discuss actions that can be taken to mitigate the effects of the project. King stressed that the Advisory Council did not have the authority to stop federal projects, but they did provide comments on the cultural and historical properties of the area. Mr. King said he has been reviewing various government regulations to see how responsive they are to tribal cultural and religious concerns. As a result of this, he said

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the Council was trying to negotiate an agreement with DOE regarding how DOE will handle cultural/religious tribal matters. At this point they have developed a draft programmatic agreement (Attachment 2), and encouraged the tribes and other interested parties to comment to the Council on the draft. The tribes asked if NRC planned to comment on the proposed MOU. I said this was the first time I had heard about it and would have to discuss it with NRC management. Mr. King was asked by one of the tribal representatives if the Council would be able to provide support and possible court testimony supporting a recommendation they would make about tribal cultural and religious concerns. Mr. King replied yes and said that no federal government agency has oversight on the Council's testimony. However, he added, there are some practical politics involved which include the appointment by the President of the Advisory Council Chairman and the appointment, also by the Administration of the agency directors.

Suzan Shown Harjo, NCAI Executive Director, said the federal government must look at two major questions under the NWPA involving cultural/religious tribal concerns: (1) What weight do tribal cultural and religious concerns have in both the DOE process and the NRC licensing process? and (2) How will the federal government acquire expertise in these areas? Ms. Harjo concluded by saying the tribes have tremendous problems with the idea of relocating. The entire past history between the tribes and the federal government on relocation is bad. Ms. Harjo said the tribes would not accept relocation of their people and their Reservations because of a potential repository or because of the potential contamination from a repository.

Although, we (NRC) found out about the NCAI Albuquerque meeting too late to be included in the written agenda, we were asked to give a presentation at the meeting. I gave a brief overview of the NRC's role in implementing the NWPA, and also discussed the various activities we have for keeping States/Tribes informed about our program. As a result, several of the tribal representatives at the meeting requested to be put on our mailing list. I was asked whether a tribe that did not have "affected" status under the NWPA, but would be affected by transportation or potential contamination of food sources, could participate in the program of personnel exchange under the Intergovernmental Personnel Act. I said I did not know since we hadn't dealt with this yet, but would try to get a response and get back to him.

Russell Jim, Yakima Indian Nation, gave the final presentation of the first day. He criticized the BIA for not coming up with a policy to protect and preserve the history of the Indian cultures. The federal government, said Jim, is constantly trying to "civilize" the tribes and assimilate them into the main stream of society. But, pointed out Jim, the tribes are bi-cultural and intend to remain that way. "The culture and religion of the tribe is a way of life

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for my people. The bones and blood of my people are intertwined with the earth. The archeology of an area is our culture and cannot be traded off for economics or 'just compensation,'" said Jim. "All things cannot be equated with economics. We live in concert with the earth and our resources. They are invaluable and irreplaceable."

Mr. Lee Price, representing the Environmental Protection Agency, discussed the power a tribe has to regulate non-indian behavior on their Reservation. In a recent Montana Court case, it was decided that the tribes can regulate if the action can be shown to affect the health, welfare or economics of the tribe. Lee said this case provides strong support for tribal regulation of non-indians on their Reservation. However, cautioned Lee, the NWPA language is so strong that there is not room left for the tribes or states to impose their own regulation. Essentially, a "pre-emption" rule may exist which would bar enforcement activities by the states and tribes under the NWPA. However, according to Lee, the area of regulation most ambiguous under the NWPA, and least likely to be pre-empted, is transportation. The tribes can put forth tribal resolutions making their positions known. But, said Lee, the resolution would not be a legal action until the day the tribe attempts some type of enforcement action. He encouraged the tribes to regulate the materials rather than imposing an outright ban, which would likely be overturned.

Kevin Gover, an attorney with the firm of Fried, Frank, Harris, Shriver and Jacobson, which represents several of the tribes, discussed the components of a model tribal ordinance dealing with transportation. Two major considerations in writing an ordinance that can be upheld in court, said Gover, are: the ordinance cannot be in conflict with federal statutes and laws; and the ordinance cannot place an unreasonable burden on commerce.

Then Mr. Gover discussed the seven components which he feels should be part of a model tribal ordinance:

1. Become familiar with the applicable federal laws and adopt them as part of the tribal ordinance;
2. Establish a structure within the tribe for dealing with the activity regulated, preferably one main contact;
3. Establish an application or certification fee so that the tribe would grant permits to transport the material across the Reservation. This would pay for the inspection and permit process, and prove to the tribe that the cargo and method of transport is safe. This fee is the most acceptable type of tax and would be "plowed" back into the services the tribe provides;

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4. Develop a provision in the ordinance that all those carrying hazardous substances through the Reservation must give advance notice to the tribe. The tribe could then inspect the shipment or provide an escort if they so desired;
5. The ordinance must provide for an emergency response plan. It would best utilize resources if this was done in concert with the state and the federal government;
6. Establish civil sanctions for those failing to comply with the ordinance. These cannot be criminal penalties since the tribes have no jurisdiction over non-indian criminal sanctions; and
7. Establish some type of liability for accidents or injuries to provide for compensation.

Mr. Gover said that an ordinance embodying these provisions would have a strong chance of being upheld in court. A simple outright ban on the transportation of radioactive materials across the Reservation would be immediately overturned or pre-empted by the federal government. Mr. Gover discussed a recent supreme court case which decided that if a non-indian wants to question or litigate an action by a tribe, the supreme court ruled that the non-indian parties must first try to seek resolution of the litigation in the tribal court. Mr. Gover said that in the event of litigation, the tribe, in its judicial system, must be sure that it provides for due process and has established clear-cut understandable judicial procedures.

/s/

Catherine F. Russell
Project Manager
State/Tribal Activities
Division of Waste Management

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NATIONAL CONGRESS OF AMERICAN INDIANS

8/11/1990

NATIONAL INDIAN NUCLEAR WASTE REVIEW COMMITTEE Aspects of Siting and Transportation Issues All Pueblo Cultural Center 2401 - 12 Street, N.W. Albuquerque, New Mexico

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Cheyenne & Creek

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Gila River

PORTLAND AREA

Delbert Frank
Warm Springs

SACRAMENTO AREA

Denis Turner
Rincon Band of Luiseno

SOUTHEASTERN AREA

A. Bruce Jones
Lumbee

Wednesday, August 14 - Sheraton Old Town Inn

7:00 p.m. Reception in Hospitality Room

Thursday, August 15 - All Pueblo Cultural Center

8:00 a.m. Registration; Continental Breakfast,
Suggested donation \$1.50

8:45 a.m. Invocation

9:00 a.m. Welcome and Opening Remarks

Gilbert Pena, Chairman, All Indian Pueblo Council

9:15 a.m. Agenda Overview; Review Chicago DOT/NRC Meeting

Robert Holden, NCAI Natural Resources Researcher

9:30 a.m. Introductions

10:00 a.m. Department of Energy Update on 1st and 2nd
Repository, Proposal for MRS and Cultural
Surveys

Tom Tinsley, Basalt Waste Isolation Project,
Hanford Reservation, Washington
J. Bennett Easterling, Senior Policy Analyst,
U. S. Department of Energy

11:00 a.m. Considerations of Traditional Cultural Values in
Archeological Surveys of the First and Second
Repository; Discussion of DOE Report on Religious
Freedom Issues

Thomas F. King, Resource Preservation Director,
Advisory Council on Historic Preservation
Reuben A. Snake, Jr., Chairman, Winnebago Tribe
of Nebraska; Commissioner, NCAI Commission to
Examine the Commercialization of Indian Religious,
Philosophical, and Cultural Values
Suzan Shown Harjo, NCAI Executive Director

12:00 Lunch Break - AIPC Restaurant

1:00 p.m. Tribal Concerns on Archeological Surveys
Russell Jim, Nuclear Waste Program Manager,
Yakima Nation

1:30 p.m. Discussion of Tribal Concerns

2:30 p.m. Adjournment - NINWRC participants have been
invited to attend the Zia Pueblo Feast

Friday, August 16 - All Pueblo Cultural Center

8:30 a.m. Continental Breakfast,
Suggested donation \$1.50

9:00 a.m. Tribal Regulatory Authority
B. Kevin Gover, Associate Attorney, Fried, Frank,
Harris, Shriver and Jacobson

9:30 a.m. Transporting High-Level Nuclear Waste
Ted Wolf, Technical Staff, Sandia National Labs
Roy Garrison, Chief, Transportation, U. S.
Department of Energy

10:30 a.m. State Recommendations on Transportation
Lori Friel, Attorney, Western Interstate
Energy Board

11:00 a.m. Discussion of Tribal Concerns

12:00 Lunch Break - AIPC Restaurant

1:00 p.m. The Role of EPA
Lee Price
~~Sadie Hoskie~~, Specialist, Environmental
Protection Agency

1:30 p.m. Tribal Reports, Questions and Comments From
NINWRC Tribal Representatives

3:00 p.m. NINWRC Recommendations for Next Meeting, Agenda,
Topics, Speakers and Workplans
Wyatt Rogers, NCAI Project Liason, Council of
Energy Resource Tribes
Gail Chehak, NCAI Natural Resources Coordinator

4:00 p.m. Adjournment

PROGRAMMATIC MEMORANDUM OF AGREEMENTBETWEENTHE UNITED STATES DEPARTMENT OF ENERGY,THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,AND THENATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

DRAFT

WHEREAS, the United States Department of Energy (DOE) has been directed by Congress under the Nuclear Waste Policy Act of 1982 (P.L. 97-425) (the Act), to identify potential sites (repositories) for the disposal and storage of high-level radioactive waste and spent nuclear fuel; and

WHEREAS, the phased program for site selection entails the following:

1. Repository selection (Phase I and Phase II)
 - A. Identification of potential candidates for site characterization
(see 1.D);
 - B. Nomination of at least 5 sites as suitable for characterization,
supported by a final Environmental Assessment for each nominated site;
 - C. Recommendation to the President of 3 sites to be characterized;

D. Characterization of each of three recommended sites, including extensive background study and testing, supported by Site Characterization Plans and Environmental Field Activity Plans;

E. Selection from the 3 characterized sites of 1 site for repository construction, supported by a final Environmental Impact Statement.

2. Development of other facilities specified in the Act; and

WHEREAS, the Characterization step for Phase I, and the Identification, Nomination, and Characterization steps for Phase II are considered to be the undertaking for purposes of this PMOA; and

WHEREAS, the Selection and Construction steps for Phases I and II are not within the undertaking considered in this PMOA; and

WHEREAS, the undertaking will involve ground-disturbing activities required for investigation and testing, particularly during site characterization; and

WHEREAS, the DOE has determined that the proposed undertaking could have effects upon historic, prehistoric, archeological, architectural, and cultural properties (historic properties) included in or eligible for inclusion in the National Register of Historic Places; and

WHEREAS, pursuant to Section 106 of the National Historic Preservation Act of 1966, Section 2(b) of Executive Order 11593, and Section 800.4 of the regulations of the Advisory Council on Historic Preservation (Council), "Protection of Historic and Cultural Properties" (36 CFR Part 800), the DOE has requested the comments of the Council; and

WHEREAS, pursuant to 36 CFR Section 800.8(a) of the Council's regulations, the DOE has requested the development of a Programmatic Memorandum of Agreement (PMOA) to cover the undertaking; and

WHEREAS, the DOE, the Council, and the National Conference of State Historic Preservation Officers have consulted and will continue to consult and to review the undertaking to consider feasible and prudent alternatives to avoid, minimize, or satisfactorily mitigate adverse effects to historic properties;

NOW, THEREFORE, it is mutually agreed that implementation of the undertaking in accordance with the following stipulations and site-specific subsidiary agreements will avoid or satisfactorily mitigate its adverse effects on historic and cultural properties.

STIPULATIONS

1. MONITORING THE PMOA

The DOE will establish and maintain an integrated management system for monitoring compliance with this PMOA and all applicable subsidiary agreements. Representatives of the DOE Headquarters and Project Office Staffs

will ensure that the stipulations in this PMOA and subsidiary agreements are satisfied in a complete and timely fashion at each step of the process, and will report to the Council and applicable State Historic Preservation Officer(s) (SHPO) annually on progress in implementation.

2. SITE CHARACTERIZATION OF 3 SITES FOR THE FIRST REPOSITORY

The DOE will comply with the stipulations and terms of the attached site-specific subsidiary agreements for site characterization at the 3 sites approved by the President. In the event that another site is selected for characterization for which a subsidiary agreement has not been developed, the DOE will work with the Council and the applicable SHPO to develop, conclude and implement such an agreement prior to any activities that may disturb land in or around the site.

3. SITE SELECTION FOR THE FIRST REPOSITORY

The DOE will again seek the comments of the Council and the National Conference of State Historic Preservation Officers pursuant to Section 106 and the Council's regulations prior to the Site Selection phase. Consultation will be initiated at the earliest possible stages of preparing the draft Environmental Impact Statement.

4. IDENTIFICATION PHASE FOR THE SECOND REPOSITORY

As part of the preparation of draft Environmental Assessments for the second repository or other facilities specified in the Act, the DOE will undertake background studies and preliminary field investigations related to the history, prehistory, archeology, ethnology and architecture for the site areas. On the basis of such studies, the DOE will identify the likely direct and indirect effects of the project on historic properties. Such studies will follow the guidelines in "The Secretary of the Interior's Standards and Guidelines for Identification" (Appendix 1) and will be undertaken in consultation with the applicable SHPO.

5. NOMINATION PHASE FOR THE SECOND REPOSITORY

As part of the development of Environmental Assessments, and before nomination of five sites for the second repository (or for other facilities specified in the Act), the DOE will consult with the Council, the applicable SHPO, and other parties having historical, cultural, religious, or similar interests in the site and its environs to develop a subsidiary site-specific agreement similar to those appended to this PMOA at the time of its execution. Upon agreement by the consulting parties, such additional subsidiary agreement(s) will become a binding part of this PMOA.

6. SITE CHARACTERIZATION PHASE FOR THE SECOND REPOSITORY

The DOE will carry out site characterization for the second repository (or testing for additional site facilities) under the terms of the site-specific subsidiary agreement developed during the Nomination Phase (Stipulation 5).

7. SITE SELECTION FOR THE SECOND REPOSITORY

The DOE will again seek the comments of the Council and the National Conference of State Historic Preservation Officers pursuant to Section 106 and the Council's regulations prior to the Site Selection Phase for the second repository or other facilities specified in the Act. Consultation will be initiated at the earliest possible stage of preparing the draft Environmental Impact Statement.

8. DOE CONTRACTORS

The DOE will ensure that contractors and sub-contractors hired for purposes of this undertaking are provided copies and are bound by the terms of this PMOA and all of the site-specific subsidiary agreements and attached appendices. The DOE's ground-disturbing activities will be planned and designed to comply with the recommendations, standards, and guidance provided by these documents.

9. COUNCIL COMMENTS

If the DOE is unable to carry out the terms of the PMOA, the DOE will not take or sanction any action or make any irreversible commitment that would result in an adverse effect on National Register or eligible properties within the scope of this PMOA or would foreclose the Council's consideration of avoidance or mitigation alternatives until it has obtained the Council's comments, pursuant to the Council's regulations, for each individual action carried out as part of the undertaking.

10. DISPUTE RESOLUTION

- A. Whenever possible, disagreements will be resolved by consultation between the DOE and the relevant SHPO. The DOE may consult with the Council and other parties, as appropriate, to remove an objection.
- B. Should any objections regarding the eligibility of a property for the National Register of Historic Places be determined by the DOE to require review, or should any objections by the Council address the eligibility of a property for the National Register of Historic Places, the DOE will obtain a final determination of eligibility from the Keeper of the National Register within 30 days.
- C. Where the DOE, the relevant SHPO, or the Council requires review of a disagreement (except with respect to objections relating to the eligibility of a property for the National Register of Historic Places) the DOE will provide to the Council documents and information necessary to allow the Council to comment. Within 15 working days of receipt of such documents and information, the Council will:
 - i) provide the DOE a finding of fact and recommendations, after consideration of which the DOE will make a final decision in the matter; or

ii) notify the DOE that the matter will be scheduled for review and comment by the full Council or a panel, and conclude such review and comment within 45 days thereafter, after which the DOE will make a final decision in the matter.

D. The DOE will provide to all pertinent SHPO(s), the Council, and relevant agencies copies of all written objections, findings and recommendation or comments of the Council, determinations from the Keeper, and determinations of final action of its own.

11. MODIFICATION

If any party to this PMOA believes that the terms of the PMOA cannot be met, or believes that an amendment to this PMOA is necessary, that party will notify the other parties of its proposed amendment to this PMOA. Any modification, to become effective, will require agreement by all of the parties.

12. EFFECTIVE DATE AND TERM

This PMOA will become effective upon the latest date of execution by the parties, and will remain in effect until terminated by any of the parties by thirty-days prior written notice to the other parties.

SITE-SPECIFIC SUBSIDIARY AGREEMENTPROGRAMMATIC MEMORANDUM OF AGREEMENTYUCCA MOUNTAIN SITE, NEVADA RESEARCH AND DEVELOPMENT AREA, NEVADA

If the President selects the Yucca Mountain Site, Nevada Research and Development Area, Nevada, for site characterization, the Department of Energy (DOE) will ensure that the following activities are carried out:

STIPULATIONS1. COMPLIANCE WITH THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT

Within _____ days after the site is selected for site characterization, and before any earthmoving or other activities that could affect the land are undertaken on the site, the DOE will initiate consultation with American Indian groups having cultural ties to the area. The DOE will contact the Bureau of Indian Affairs, the Nevada State Historic Preservation Officer (SHPO), the Western Shoshone, other local tribes, and other interested parties to ensure identification and notification of all potentially involved Indian groups. Such consultation will be held to assure that any properties of cultural or religious value to such groups are identified and avoided to the extent feasible.

Consultation will be undertaken in a manner responsive to the cultural systems of the groups involved (e.g. Tribal Council, religious leaders) with reference

to the Advisory Council on Historic Preservation's (Council's) draft "Guidelines for Consideration of Traditional Cultural Values in Historic Preservation Review" (Appendix 2).

If such properties are identified and cannot be avoided, the DOE will consult further with the American Indian group(s) involved, the Nevada SHPO, and the Council to seek ways to mitigate project effects on such properties. The DOE will make every effort to include recommended mitigation measures in the final decisions on the undertaking.

2. PUBLIC AWARENESS/EDUCATION

Within _____ days after the site is selected for site characterization, and before any earthmoving or other activities that could affect the land are undertaken on the site, the DOE, with the advice of the Nevada SHPO, will develop and implement a comprehensive public awareness/education program for archeological and historic resources. The program will include, but need not be limited to, the following components:

- A. distribution of information to all project workers and their dependents, informing them about the Archeological Resources Protection Act, warning against the unauthorized collection or disturbance of archeological materials, and encouraging them to report the discovery of such materials to appropriate authorities;

- B. development of an education program using such techniques as slide Presentations, brochures, and films to inform workers about local history and prehistory, the science of archeology, and the importance of archeological resources;
- C. establishment of a professionally supervised recreational archeology activity for voluntary participation by interested workers on the site during their leisure hours. Such a program should be designed to provide interested workers the opportunity to be involved in archeology in a positive way, to discourage private collection of archeological materials, and to encourage a responsible attitude toward archeological resources. This activity should be integrated within the overall archeological program;
- D. if warranted, development of a display and interpretation of local history and prehistory in an appropriate project facility on site.

3. RESEARCH DESIGN

Within _____ days after the site is selected for site characterization, and before any earthmoving or other activities that could affect the land are undertaken on the site, the DOE, in consultation with the Nevada SHPO, will develop and implement a comprehensive research design to guide archeological survey and data recovery. This design should:

- A. be at a level of detail appropriate to the known and expected resource base at the site and its environs;
- B. establish significant, defensible research questions to be addressed. Such questions should be developed with reference to the Council's Handbook, "Treatment of Archeological Properties", Particularly Appendix A (Handbook) (Appendix 3), and to the Nevada State Historic Preservation Planning Process;
- C. establish cost-effective strategies and methods for addressing the research questions;
- D. identify actual and potential archeological sites and areas that should be investigated in order to address the research questions, and which are subject to direct or indirect effect by the project;
- E. be consistent with the Handbook, the Nevada State Plan, the Secretary of the Interior's "Standards and Guidelines for Archeological Documentation" (Appendix 4) and, as applicable, the Secretary of the Interior's "Standards and Guidelines for Identification" (Appendix 1), and the "Standards of Research Performance" of the Society of Professional Archeologists (Appendix 5).

4. ARCHEOLOGICAL SURVEY AND DATA RECOVERY

- A. Before any earthmoving or other activities that could affect the land are undertaken at the site, the DOE will ensure completion of archeological surveys to identify and evaluate historic properties which may be subject to impact. Such survey will be consistent with the research design (Stipulation 3), Nevada SHPO standards and guidelines, and the Secretary of the Interior's "Standards and Guidelines for Identification" (Appendix 1).
- B. Survey will address areas which are:
- i) subject to direct and indirect project effects;
 - ii) both within the boundaries of the site and in off-site areas potentially subject to effect.
- C. Survey will concentrate on areas subject to the following effects:
- i) construction impacts;
 - ii) impacts of land use changes;
 - iii) impacts of possible vandalism of archeological sites and other historic properties;
 - iv) impacts of induced growth in the vicinity of the site.
- D. If possible, project activities will be moved or redesigned to avoid damage to any historic site.

E. If avoidance is not possible, the DOE will develop and implement a data recovery plan in consultation with the Nevada SHPO. Any archeological data recovery plan prepared under this PMOA will be in accordance with the Secretary of Interior's "Standards and Guidelines for Archeological Documentation" (Appendix 4), and will incorporate the recommendations in Part III of the Council's Handbook (Appendix 3).

5. INTERPRETATION OF HISTORIC TRAILS

- A. The DOE will avoid impact to the major historic trails which traverse the site.
- B. Wherever possible, the DOE will identify historic trails by using interpretive marker(s), self-guided trail brochures or other mechanisms.

6. PROFESSIONAL QUALIFICATIONS

All required archeological work will be carried out under the direct supervision of a professional archeologist who meets the Membership Requirements of the Society of Professional Archeologists (Appendix 6) or the Secretary of the Interior's Professional Qualifications Standards (Appendix 7).

7. INTERAGENCY COORDINATION

A. The DOE will consult with the Department of Defense to coordinate implementation of this PMOA with the on-going Cultural Resources Management program at the Nevada Research and Development Area.

B. The DOE will consult with the Nevada SHPO throughout the process to ensure consistency with the Nevada State Planning Process. The DOE will ensure that data, materials and reports from its contractors will be available to the Nevada SHPO during the course of on-going work relevant to this PMOA.