

POLICY ISSUE NOTATION VOTE

February 1, 2006

SECY-06-0020

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

Karen D. Cyr
General Counsel

SUBJECT: PRIVATE FUEL STORAGE, L.L.C. - THE ADVISORY COUNCIL ON
HISTORIC PRESERVATION'S COMMENT(S) ON TERMINATION OF
CONSULTATION PROCESS

PURPOSE:

To provide the staff's analysis of the Advisory Council on Historic Preservation's (ACHP's) comments provided in response to the staff's letter, dated November 22, 2005. In that letter, the U.S. Nuclear Regulatory Commission (NRC) terminated its participation in the consultation process under Section 106 of the National Historic Preservation Act (NHPA) regarding Private Fuel Storage, L.L.C. (PFS's) application to construct and operate an independent spent fuel storage installation (ISFSI). Also, to inform the Commission that the staff plans to issue a license authorizing PFS's proposed ISFSI in accordance with the Commission's Memorandum and Order, CLI-05-19, dated September 9, 2005, after the Commission has responded to the ACHP's letter, dated January 9, 2006 (Attachment 1).

CONTACTS: Sherwin E. Turk, OGC
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Stewart W. Brown, SFPO
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BACKGROUND:

The Commission, in CLI-05-19, authorized the staff to issue a license to PFS to construct and operate its proposed ISFSI once the staff has made the requisite findings pursuant to 10 C.F.R. § 72.40. In SECY-05-0198, dated October 31, 2005, the staff identified the need to complete certain actions under the provisions of the NHPA and the ACHP's regulations, 36 C.F.R. Part 800, before a license could be issued. Specifically, the Bureau of Land Management (BLM), one of the four cooperating Federal agencies in the Final Environmental Impact Statement (FEIS),¹ as well as in the PFS NHPA consultation process,² declined to implement a Memorandum of Agreement (MOA), the final step of the consultation process, at this time. BLM's decision precluded the MOA from being finalized, thereby preventing the NRC (as well as the other three cooperating Federal agencies), from completing the actions necessary to meet its NHPA obligations.

In SECY-05-0198, the staff recommended that NRC proceed through literal compliance with the ACHP's regulations by terminating the consultation process in accordance with 36 C.F.R. § 800.7. In keeping with the Commission direction in a Staff Requirements Memorandum (SRM), dated November 15, 2005, the staff sent a letter to the ACHP on November 22, 2005. In its SRM, the Commission further directed the staff, upon receipt of the ACHP's comments, to prepare a notation paper relaying the staff's analysis of the comments as well as a recommendation for resolution of any outstanding issues, prior to proceeding with any additional action.

DISCUSSION:

The staff, in a letter from Jack Strosnider, Director of the Office of Nuclear Material Safety and Safeguards, to the ACHP, dated November 22, 2005, described the consultation process and steps which had been taken to comply with the NHPA, the NRC's proposed incorporation of the MOA's draft treatment and discovery plan requirements into an NRC license condition, and the refusal by the Utah State Historic Preservation Officer (SHPO) and BLM to execute the MOA at this time. Further, the staff's letter terminated NRC's participation in the NHPA consultation process and requested the ACHP to provide its comments on such termination in accordance with 36 C.F.R. § 800.7.

ACHP's Comments

The ACHP, in a letter from its Chairman, John L. Nau, III, to Chairman Diaz, dated January 9, 2006, provided the following comments:

¹ "Final 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 and the Related Transportation Facility in Tooele County, Utah," NUREG-1714, December 2001.

² The BLM, the Bureau of Indian Affairs, the Surface Transportation Board, and the NRC agreed to work in partnership as cooperating Federal agencies, to complete the actions required by the NHPA and 36 C.F.R. Part 800.

1. 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

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.

2. 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 the rail line is approved for construction.³
3. 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 execution of an MOA prior to issuing any required approvals for the project.

³ The ACHP's citation of "NRC's Condition 3.A" refers to item A in Environmental Condition 3 provided in Section 9.4.2 of the FEIS.

Staff Analysis of the ACHP's CommentsACHP Comment 1

The ACHP correctly recognized that “key” agencies and organizations whose interests are most directly affected by the MOA – including historic trail organizations and the Skull Valley Band of Goshute Indians – have executed the MOA, thus demonstrating their support for the mitigation measures proposed in the MOA and its draft treatment and discovery plans. The ACHP concluded that it “has no objection to the substantive provisions of the MOA or to the treatment proposed for the historic properties.”

The NRC staff has proposed inclusion of a condition in the PFS license requiring implementation of certain procedures for the protection of historic and cultural resources. In Section 9.4.2, “Mitigation Measures,” of the FEIS (Attachment 2), the staff from each of the four cooperating Federal agencies proposed that the eight Environmental Conditions listed in that section be included, as appropriate, as part of each agency’s record of decision. See FEIS at 9-12. One of those conditions, Environmental Condition 3, identifies seven specific requirements for the protection of cultural resources, based on the MOA and its draft treatment and discovery plans. These proposed requirements are also attached to the ACHP’s letter of January 9, 2006. In accordance with Section 9.4.2 of the FEIS, and consistent with the ACHP’s letter, the NRC staff intends to include the following condition in the PFS license:

The licensee shall comply with the “Environmental Conditions” specified in Section 9.4.2, Mitigation Measures, of the Final 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 and the Related Transportation Facility in Tooele County, Utah.

This proposed license condition includes Environmental Condition 3, “Cultural Resources.” This condition requires PFS to implement all the mitigation measures identified in the MOA before beginning construction of the rail line, and to take certain specified actions with regard to any unrecorded artifacts or cultural resources identified during the construction process.

The ACHP’s comment indicates that the ACHP approves of the approach taken by the staff in the FEIS, which documents “a commitment by NRC to condition the license on implementation of the terms of the MOA.” The ACHP further states its view that this approach provides “a reasonable and appropriate means of concluding its [the NRC’s] responsibilities under Section 106 of the NHPA.” Further, the ACHP states that it “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.” Accordingly, the Commission may properly conclude that the conditions described in the FEIS provide reasonable assurance that historic and cultural properties will not be adversely affected by issuance of a license for the proposed PFS Facility, and no further action is required with respect to this comment prior to issuance of a license to PFS.

ACHP Comment 2

In this comment, the ACHP observed that the recently enacted Defense Authorization Act of 2006 designates a Cedar Mountain Wilderness Area in the area of PFS's proposed rail line, which could impede PFS's ability to construct and operate its proposed rail line in that area. The ACHP observed that paragraph A of proposed environmental license condition 3 has the effect of "requiring the MOA and treatment plan to be implemented only if the rail line is approved for construction." Thus, if the rail line is not constructed in that area as proposed, any historic and cultural resources identified in that area would not be impacted and the MOA's provisions to protect those resources will not be needed. Further, it should be noted that the proposed license condition imposes certain requirements that pertain to the PFS site or any lands under BLM's jurisdiction (Environmental Conditions 3.B - 3.G), and thus provides assurance that any historic and cultural resources in those areas will not be adversely affected by construction and operation of the PFS Facility, even if the proposed rail line is not constructed. No further action is required with respect to this comment prior to issuance of a license to PFS.

ACHP Comment 3

This comment indicates that the ACHP believes that BLM "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." The ACHP further indicates that "if BLM approves an alternative means to transport spent fuel to the PFS site, it will need to consider the effects of that alternative on historic properties." In that event, the ACHP indicates that it would support any further efforts to obtain an executed MOA "prior to issuing any required approvals for the project." This comment reflects the ACHP's intention to continue to render assistance to other Federal agencies in obtaining final executed agreements that may be pertinent to separate actions pending before those agencies, if the current "moratorium on land use planning is lifted" or if BLM approves an alternative plan for the transportation of spent fuel to the PFS site.⁴ This presents an entirely hypothetical case, and no further action is required with respect to this comment prior to issuance of a license to PFS (conditioned as described above).

Additional Observations

After providing its comments on the NRC's termination letter, the ACHP acknowledged "the

⁴ This comment appears to address comments submitted to the ACHP by John Harja, the Utah SHPO, in a letter dated December 23, 2005. In his letter, Mr. Harja opined that the NRC's termination letter attempted to terminate the consultation process for all parties and to find that the NHPA consultation process was satisfied for all parties; that the NRC cannot regulate PFS's proposed off-site activities; and that the State and BLM have not terminated their participation in the consultation process. The ACHP's letter of January 9 implicitly addresses these concerns, recognizing that other parties may continue the NHPA consultation process with respect to their proposed actions, notwithstanding the NRC's termination of the consultation process with respect to the NRC's proposed licensing action.

diligent and thorough manner in which your agency has addressed its responsibilities under the National Historic Preservation Act for this undertaking.” The ACHP then reminded the agency that the following procedures should be followed to conclude this matter:

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(l) 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.

As noted by the ACHP, these procedural requirements are applicable where a Federal agency terminates the NHPA consultation process under 36 C.F.R. § 800.7. In compliance with these requirements, the staff has prepared a letter to the ACHP which provides a summary of the rationale for a decision to issue a license to PFS, confirms that the NRC has considered the ACHP’s comments in reaching its decision, and reiterates that the NRC will condition the PFS license on compliance with the requirements stated in Section 9.4.2 of the FEIS. The draft letter to ACHP is provided as Attachment 3 for the Commission’s review and approval.

Conclusion

With NRC’s termination of the PFS NHPA consultation process in accordance with 36 C.F.R. § 800.7, and the ACHP’s determination that NRC has met its NHPA obligations, the staff concludes that there are no outstanding issues that preclude the NRC from issuing a license for construction and operation of the proposed PFS Facility, upon compliance with the final administrative tasks outlined by the ACHP in its letter of January 9, 2006.

RECOMMENDATIONS:

That the Commission:

1. Approve Attachment 3, a letter to John Nau, III, Chairman of the ACHP, for signature by the Chairman, summarizing the rationale for this licensing decision and documenting the NRC’s consideration of the ACHP’s comments. Upon transmittal, a copy of this letter will be sent to all consulting parties.
2. Note that upon issuance of Attachment 3, the staff plans to issue the license to PFS in accordance with the Commission’s Memorandum and Order, CLI-05-19.

3. Approve the attached *Federal Register* Notice (Attachment 4), informing the public that the Commission has approved the issuance of a license to PFS for construction and operation of the proposed PFS Facility and of the conclusion of the NHPA process in accordance with the ACHP's letter of January 9, 2006, and making the record available for public inspection in the NRC's ADAMS document collection.

/RA/

Luis A. Reyes
Executive Director
for Operations

/RA/

Karen D. Cyr
General Counsel

Attachments:

1. ACHP Letter dated January 9, 2006
2. PFS FEIS Sect. 9.4.2
3. Draft Letter to John Nau, III, ACHP Chairman
4. Draft Federal Register Notice

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:**

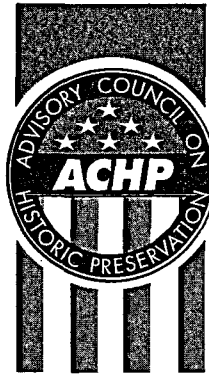
EDO --G20060039

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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.

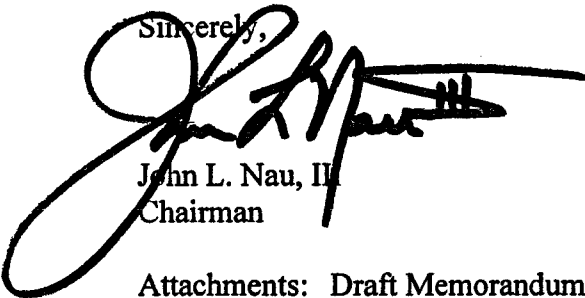
None of the other cooperating Federal agencies has informed the ACHP of a desire to terminate consultation for this undertaking. It is our understanding that BLM, the lead federal agency for Section 106 review, intends to continue consultation with STB, BIA, SHPO, and the other consulting parties pursuant 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: 10/16/05

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: *Jerry L. 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

**Final 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 and the Related Transportation Facility in Tooele
County, Utah, NUREG-1714, December 2001**

Section 9.4.2 Mitigation Measures

9.4.2 Mitigation Measures

The impact analyses contained in Chapters 4 and 5 of this FEIS have identified various mitigation measures PFS has either committed to or could take to reduce the environmental impacts associated with the proposed action. This section identifies the mitigation measures discussed in Chapters 4 and 5 that the staffs of the NRC, BIA, BLM, and STB propose be required and included, as appropriate, as part of each agency's record of decision.

Environmental Condition 1. Best Management Practices

In addition to the Best Management Practices for construction identified in Table 2.7 of this FEIS, PFS shall employ the following Best Management Practices for construction and operation of the proposed PFSF and related local transportation facilities.

- A. Minimize land area disturbances by disturbing the smallest practicable area of land near the ephemeral streams along the proposed rail line corridor.
- B. Establish staging areas for construction equipment in areas that are not environmentally sensitive to control erosion and spills.
- C. Control temporary noise from construction equipment through the use of work-hour controls, and the operation and maintenance of muffler systems on machinery.
- D. Ensure that construction and operational activities will not lead to contamination of groundwater, through a spill response procedure that provides for an appropriate response to a spill of oil or fuel at the PFSF or related transportation facilities.

Environmental Condition 2. Ecological Resources

- A. PFS has consulted with the FWS regarding threatened or endangered species that may be present in the project area. Prior to initiating construction, PFS shall complete biological surveys in the locations identified below for the presence of sensitive species that may be found at those locations. Such surveys will be based on the most current lists of sensitive and/or threatened or endangered species maintained by appropriate government agencies. When the project construction schedule is determined, PFS shall consult with BIA, the Skull Valley Band, and BLM regarding the appropriate timing of the surveys. PFS shall include the following species (and any additional ones, if identified as sensitive) in the biological surveys
 - Proposed PFSF site and the area within 0.8 km (0.5 mile) of the site
 - Loggerhead shrike
 - Burrowing owl
 - Skull Valley Pocket Gopher
 - Kit fox
 - Pohl's milkvetch
 - Proposed rail line and the area within 30 m (100 ft) of rail line construction
 - Skull Valley pocket gopher
 - Kit fox
 - Proposed rail line and the area within 0.8 km (0.5 mile) of the rail line corridor
 - Raptors (eagles, hawks, falcons, owls, loggerhead shrike)
- B. If any of the surveys required in Condition 2.A identify the presence of a sensitive species, PFS shall immediately notify the appropriate Federal agency with management responsibility (BIA or BLM).

- C. If PFS identifies any Federally-listed threatened or endangered species within the proposed PFSF site area during construction, PFS shall immediately cease construction activities and notify BIA. If PFS identifies any Federally listed threatened or endangered species, or any State of Utah or BLM sensitive species during construction of the transportation facilities related to the proposed PFSF, PFS shall immediately cease construction activities and notify BLM.
- D. If any Federally listed threatened or endangered species are taken by construction or operation of the proposed PFSF or its related transportation facilities, PFS shall immediately notify the U.S. FWS, BIA, the Skull Valley Band, or BLM, as appropriate.
- E. If any State or BLM listed threatened or endangered species are taken by construction or operation of the transportation facilities related to the proposed PFSF, PFS shall immediately notify BLM and the Utah State Department of Natural Resources.
- F. PFS shall complete any necessary biological assessment activities to support NRC, BIA or BLM's consultation requirements under the Endangered Species Act of 1973, and any BLM consultation agreements with the State of Utah.
- G. Prior to initiating operations, PFS shall consult with NRC, BIA and the Skull Valley Band to develop an adequate wildlife monitoring program to be implemented during operation of the proposed PFSF.
- H. Prior to initiating construction, PFS shall consult with BIA and BLM to develop an adequate plan for restoring and revegetating areas affected by construction of the proposed PFSF and related rail transportation facilities. (Includes greenstrip seed mix specifications)
- I. Prior to initiating construction, PFS shall consult with BIA and BLM to develop an adequate plan for monitoring and controlling exotic and noxious weeds during construction and operation of the proposed PFSF and the proposed rail line. The plan must also include an approved list of herbicides.
- J. Prior to initiating construction, PFS shall consult with BIA and BLM to develop an adequate plan for fire prevention, suppression, and rehabilitation during construction and operation of the proposed PFSF and related rail facilities.
- K. Prior to construction of the rail line, PFS shall consult with BLM to determine the appropriate design, number, and locations for rail crossings to allow fire suppression equipment to cross the rail line.
- L. PFS shall consult with BLM to develop an adequate plan to minimize impacts to livestock grazing activities during construction and operation of the rail facilities.
- M. PFS shall ensure power poles and lines on the proposed PFSF are constructed to either conform to the guidance in "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996," or more recent guidance as determined by BIA.

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 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 on the *National Register*, PFS may resume construction on the Reservation.

Environmental Condition 4. Air Quality

To control fugitive dust during construction, PFS shall implement a dust control program to minimize the off-site movement of fugitive dust. The program shall include measures to minimize dust emissions from construction and earthmoving activities (for both the proposed PFSF site and the new transportation facilities), the concrete batching facility, material transfer points and stockpiles, and temporary or permanent flood protection berms.

Environmental Condition 5. Water Resources

- A. PFS shall design all culverts and crossings of intermittent streams along the rail line to minimize the potential for ponding, erosion, and sedimentation by matching the existing topography.
- B. Prior to initiating construction, PFS shall develop a monitoring program to allow a determination as to whether the wells nearest the proposed PFSF are adversely impacted from groundwater withdrawal associated with the construction and operation of the proposed PFSF.
- C. PFS shall be responsible for clean-up of any spills or accidents at the proposed PFSF, as well as at the rail siding and along the right-of-way for the rail line. In the event of any such spills or accidents, all clean-up activities shall conform with the clean-up standards set forth in 10 CFR Part 20, 40 CFR 112.7, and applicable State of Utah or EPA requirements.
- D. PFS shall develop a maintenance plan to ensure all culverts are clear of debris to avoid potential flooding and stream flow alteration.

Environmental Condition 6. Traffic

If PFS determines that continual use of the unimproved roads adjacent to the proposed rail line is necessary to transport either workers or materials, PFS shall consult with BLM to develop an adequate

plan to minimize any degradation of the roads. BLM shall be contacted prior to any use of the unimproved roads that could lead to their degradation.

Environmental Condition 7. Construction Training

Prior to initiating construction, PFS shall identify and train on-site personnel responsible for ensuring that construction activities do not disturb sensitive ecological and cultural resources. PFS shall further ensure that all on-site construction workers are trained on potential sensitive ecological and cultural resources that could occur at the construction sites. This training shall be conducted in coordination with appropriate ecological and cultural resource personnel.

Environmental Condition 8. Monitoring and Reporting

- A. PFS shall provide quarterly reports on compliance with the required construction-related mitigation conditions to the NRC, BLM, BIA, the Skull Valley Band, and STB.
- B. PFS shall certify compliance with all construction mitigation conditions to NRC, BLM, BIA, the Skull Valley Band, and STB (1) at the completion of the rail facility construction and before initiating rail operations and (2) at the completion of the site and access road construction and before initiating operations of the PFSF.

DRAFT
Letter to ACHP

Honorable John L. Nau, III
Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, N.W. Suite 809
Washington, D.C. 20004

SUBJECT: PRIVATE FUEL STORAGE, L.L.C. - CONSIDERATION OF COMMENTS
PROVIDED BY THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
ON TERMINATION OF CONSULTATION

Dear Chairman Nau:

I am responding to your letter dated January 9, 2006, concerning the letter from Jack R. Strosnider, U. S. Nuclear Regulatory Commission (NRC) to John Fowler, Advisory Council on Historic Preservation (ACHP), dated November 22, 2005. In the NRC's letter of November 22, 2005, Mr. Strosnider informed the ACHP that, for reasons stated therein, and in accordance with the provisions of 36 C.F.R. § 800.7, the NRC had decided to terminate its participation in the consultation process established under Section 106 of the National Historic Preservation Act (NHPA), regarding the application of Private Fuel Storage, L.L.C. (PFS) for a license to construct and operate an Independent Spent Fuel Storage Installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians, located in Tooele County, UT.

In your letter of January 9, 2006, you provided the ACHP's comments on the NRC's termination of the NHPA consultation process, which the NRC is required to consider in reaching a final decision on the PFS license application. The NRC has considered the ACHP's comments, and has reached a final decision in this matter. Consistent with our obligations under the Atomic Energy Act of 1954, as amended, and in accordance with our regulations in 10 C.F.R. Part 72, the NRC has determined to grant the PFS license application and to issue a Materials License to PFS for its proposed ISFSI.

As required in 36 C.F.R. § 800.7(c)(4)(i), a summary of the NRC's decision, together with supporting rationale and evidence of our consideration of the ACHP comments, is provided below. In accordance with § 800.7(c)(4)(ii)-(iii), a copy of this summary is being provided to all consulting parties, and notice of the NRC's determination is being published in the *Federal Register*.

Background

On June 20, 1997, PFS submitted an application to the NRC for a license to construct and operate its proposed ISFSI. The published a "Notice of Docketing, Notice of Proposed Action, and Notice of Opportunity for a Hearing for a Materials License for the PFSF in the Federal Register on July 31, 1997 (62 FR 41099). The NRC then commenced its review of the safety and environmental effects of the proposed PFS Facility (PFSF).

In connection with the NRC's review of the PFS license application, the NRC, in coordination with three cooperating Federal agencies (Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), and Surface Transportation Board (STB)), developed a Final Environmental Impact Statement (FEIS), pursuant to the National Environmental Policy Act of 1969 (NEPA).¹ The FEIS considered the impacts of the construction, operation and decommissioning of the proposed ISFSI at the Skull Valley site, as well as the impacts on certain transportation facilities which had been proposed by PFS. The FEIS indicated that the NRC staff and the three Cooperating Agencies had concluded, in part, that the overall benefits of the proposed PFSF outweigh the disadvantages and cost, and that the measures required by other permitting authorities and the mitigation measures proposed in the FEIS would eliminate or ameliorate any potential adverse environmental impacts associated with the PFS license application.

The safety and security of the proposed PFSF was addressed in a Safety Evaluation Report (SER) issued in December 2000 and two amendments thereto, as reissued in a consolidated SER in March 2002.² Evidentiary hearings on the proposed license application were held before an NRC Atomic Safety and Licensing Board in 2000, 2002 and 2004. All contested issues in the proceeding have now been resolved. Most recently, on September 9, 2005, the Nuclear Regulatory Commission, acting in its adjudicatory capacity, issued its final decision in the proceeding, in which it authorized the NRC staff to issue a license to PFS to construct and operate its proposed ISFSI once the staff has made the requisite findings pursuant to 10 C.F.R. § 72.40.³

In the course of its review of the PFS license application, the NRC participated in consultations with the three Cooperating Agencies and other parties concerning the protection of historic and cultural properties which may be impacted by the agencies' proposed actions, in accordance with the NHPA and regulations promulgated by the ACHP.⁴ Pursuant to those consultations, the parties prepared a Memorandum of Agreement (MOA) and draft treatment and discovery plans. The MOA was subsequently executed by BIA, STB, the Skull Valley Band, and NRC, but was not executed by BLM, the Utah State Historic Preservation Officer (SHPO), or ACHP. In particular, both BLM and the Utah SHPO declined to execute the MOA at this time. This matter is more fully described in the NRC's letter of November 22, 2005, in which the NRC notified the ACHP that it was terminating the NHPA consultation process, in accordance with 36 C.F.R. § 800.7(a). Copies of that letter were provided to all parties involved in the consultation process.

¹ "Final 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 and the Related Transportation Facility in Tooele County, Utah," NUREG-1714 (December 2001).

² "Consolidated Safety Evaluation Report Concerning the Private Fuel Storage Facility" (March 2002).

³ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-19, 62 NRC 403 (2005).

⁴ The four Cooperating Agencies (BLM, BIA, STB and NRC) agreed to work in partnership as cooperating Federal agencies, to complete the actions required by the NHPA and 36 C.F.R. Part 800.

By letter dated January 9, 2006, the ACHP provided its comments in response to the NRC's letter of November 22, 2005. In accordance with 36 C.F.R. § 800.7(c)(4), the NRC has considered the ACHP's comments, and has determined that final action on the PFS license application is now appropriate. The following provides a summary of the ACHP's comments and the NRC's consideration thereof.

ACHP's Comments

1. 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

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.

2. 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 the rail line is approved for construction.⁵
3. 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

⁵ The ACHP's citation of "NRC's Condition 3.A" refers to item A in Environmental Condition 3 provided in Section 9.4.2 of the FEIS.

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 execution of an MOA prior to issuing any required approvals for the project.

NRC Consideration of the ACHP's Comments

ACHP Comment 1

The ACHP recommends that the NRC condition the PFS license, should it be issued, to require PFS to comply with the requirements specified in Environmental Condition 3, Cultural Resources, provided in Section 9.4.2, Mitigation Measures, of the FEIS. The ACHP correctly recognized that “key” agencies and organizations whose interests are most directly affected by the MOA – including historic trail organizations and the Skull Valley Band of Goshute Indians – have executed the MOA, thus demonstrating their support for the mitigation measures proposed in the MOA and its draft treatment and discovery plans. The ACHP concluded that it “has no objection to the substantive provisions of the MOA or to the treatment proposed for the historic properties.”

Consistent with recommendations contained in the FEIS, the NRC will include a condition in the PFS license requiring implementation of certain procedures for the protection of historic and cultural resources. In Section 9.4.2, “Mitigation Measures,” of the FEIS, the staff from each of the four cooperating Federal agencies proposed that the eight Environmental Conditions listed in that section be included, as appropriate, as part of each agency’s record of decision. See FEIS at 9-12. One of those conditions, Environmental Condition 3, identifies seven specific requirements for the protection of cultural resources, based on the MOA and its draft treatment and discovery plans. These proposed requirements are also attached to the ACHP’s letter of January 9, 2006. In accordance with Section 9.4.2 of the FEIS, and consistent with the ACHP’s letter, the NRC plans to include the following condition in the PFS license:

The licensee shall comply with the “Environmental Conditions” specified in Section 9.4.2, Mitigation Measures, of the Final 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 and the Related Transportation Facility in Tooele County, Utah.

This proposed license condition includes Environmental Condition 3, “Cultural Resources.” This condition requires PFS to implement all the mitigation measures identified in the MOA before beginning construction of the rail line, and to take certain specified actions with regard to any unrecorded artifacts or cultural resources identified during the construction process.

The ACHP’s comment indicates that the ACHP approves of the approach taken in the FEIS, which documents “a commitment by NRC to condition the license on implementation of the terms of the MOA.” The ACHP further states its view that this approach provides “a reasonable and appropriate means of concluding its [the NRC’s] responsibilities under Section 106 of the NHPA.” Further, the ACHP states that it “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 [FEIS].” Accordingly, the Commission concludes that the conditions described in the FEIS provide reasonable assurance that historic and cultural properties will not be adversely affected by issuance of a license for the proposed PFS Facility. No other NRC action is required with respect to this comment prior to issuance of a license to PFS.

ACHP Comment 2

In this comment, the ACHP observed that the recently enacted Defense Authorization Act of 2006 designates a Cedar Mountain Wilderness Area in the area of PFS’s proposed rail line, which could impede PFS’s ability to construct and operate its proposed rail line in that area. The ACHP also observed that paragraph A of proposed environmental license condition 3 has the effect of “requiring the MOA and treatment plan to be implemented only if the rail line is approved for construction.” Thus, if the rail line is not constructed in that area as proposed, any historic and cultural resources identified in that area would not be impacted and the MOA’s provisions to protect those resources will not be needed. It should be noted that the proposed license condition imposes certain requirements that pertain to the PFS site or any lands under BLM’s jurisdiction (Environmental Conditions 3.B - 3.G), and thus provides assurance that any historic and cultural resources in those areas will not be adversely affected by construction and operation of the PFS Facility, even if the proposed rail line is not constructed. No further NRC action is required with respect to this comment prior to issuance of a license to PFS (conditioned as described above).

ACHP Comment 3

In this comment, the ACHP expresses its belief that BLM “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.” The ACHP further indicates that “if BLM approves an alternative means to transport spent fuel to the PFS site, it will need to consider the effects of that alternative on historic properties.” In that event, the ACHP indicates that it would support any further efforts to obtain an executed MOA “prior to issuing any required approvals for the project.” This comment reflects the ACHP’s intention to continue to render assistance to other Federal agencies in obtaining final executed agreements that may be pertinent to separate actions pending before those agencies, if the current “moratorium on land use planning is lifted” or if BLM approves an alternative plan for the transportation of spent fuel to the PFS site.⁶ This presents a hypothetical case, and no further NRC action is required with respect to this comment prior to issuance of a license to PFS (conditioned as described above).

⁶ This comment appears to address comments submitted to the ACHP by John Harja, the Utah SHPO, in a letter dated December 23, 2005. In his letter, Mr. Harja opined that the NRC’s termination letter attempted to terminate the consultation process for all parties and to find that the NHPA consultation process was satisfied for all parties; that the NRC cannot regulate PFS’s proposed off-site activities; and that the State and BLM have not terminated their participation in the consultation process. The ACHP’s letter of January 9 implicitly addresses these concerns, recognizing that other parties may continue the NHPA consultation process with respect to their proposed actions, notwithstanding the NRC’s termination of the consultation process with respect to the NRC’s proposed licensing action.

Additional ACHP Observations

After providing comments on the NRC's termination letter, the ACHP acknowledged "the diligent and thorough manner in which your agency [NRC] has addressed its responsibilities under the National Historic Preservation Act for this undertaking." We appreciate your remarks, and look forward to further cooperation with the ACHP with respect to future NRC licensing actions.

With respect to the NHPA Section 110 obligations noted in your letter, a copy of this letter is being provided to all consulting parties and other members of the public that have an interest in the PFS licensing action. In addition, consistent with NRC's practice of publishing a "Notice of Issuance" in the *Federal Register* when a materials license is issued for an ISFSI, the NRC will provide notice to the public when the PFS license is issued. Documents upon which the NRC based its decision to license the PFS Facility, including the Safety Evaluation Report and FEIS, are available electronically from NRC's Electronic Reading Room at http://www.nrc.gov/reading_rm/adams.html. From this site, the public can access NRC's Agencywide Documents Access and Management System (ADAMS) which provides text and image files of NRC's public documents. Information concerning document availability will be included in our "Notice of Issuance" for the PFS Facility license.

Finally, I sincerely want to thank you and your staff at the Advisory Council on Historic Preservation for your timely consideration of this matter, for the highly professional assistance rendered by your staff in our licensing process, and for your thoughtful comments in response to our letter of November 22, 2005.

Should you or any members of your staff have any questions related to this matter please do not hesitate to contact NRC's Project Manager for the PFS licensing action, Mr. Stewart Brown. Mr. Brown can be reached at by telephone at (301) 415-8531 or by E-mail at swb1@nrc.gov.

Sincerely,

Nils J. Diaz, Chairman
U.S. Nuclear Regulatory Commission

Honorable J. Nau, III

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U.S. NUCLEAR REGULATORY COMMISSION

DOCKET NO. 72-22

PRIVATE FUEL STORAGE, LIMITED LIABILITY COMPANY

NOTICE OF ISSUANCE OF MATERIALS LICENSE SNM-2513

FOR THE

PRIVATE FUEL STORAGE FACILITY

AGENCY: Nuclear Regulatory Commission

ACTION: Issuance of Materials License; Termination of NHPA Consultation

FOR FURTHER INFORMATION CONTACT: Stewart W. Brown, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415-8531; fax number: (301) 415-8555; email: swb1@nrc.gov.

SUPPLEMENTARY INFORMATION:

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Materials License No. SNM-2513 to Private Fuel Storage, Limited Liability Company (PFS) for the receipt, possession, storage, and transfer of spent fuel at the Private Fuel Storage Facility (PFSF), to be located on the Reservation of the Skull Valley Band of Goshute Indians, in Tooele County, Utah.

In connection with its review of the PFS license application, the NRC, in coordination with three cooperating Federal agencies, developed a final environmental impact statement

pursuant to the National Environmental Policy Act of 1969 (NEPA), which was published in December 2001. In addition, the NRC participated in consultations with the three cooperating agencies and other parties concerning the protection of historic and cultural properties which may be impacted by the agencies' proposed actions, in accordance with the National Historic Preservation Act (NHPA) and regulations promulgated by the Advisory Council on Historic Preservation (ACHP). By letter dated November 22, 2005, the NRC notified the ACHP that it was terminating the NHPA consultation process for reasons described in the letter, pursuant to 36 CFR 800.7(a); notice of such termination was also provided to all parties involved in the consultation process. By letter dated January 9, 2006, the ACHP provided its comments in response to the NRC's letter of November 22, 2005. In accordance with 36 CFR 800.7(c)(4), the NRC has considered the ACHP's comments, as set forth in a letter to the ACHP dated _____, 2006, and has determined that final action on the PFS license application is appropriate.

Accordingly, notice is hereby provided that the NRC has determined to grant the PFS license application, and to issue Materials License No. SNM-2513 to PFS for the PFSF. This Materials License is issued under the provisions of 10 CFR Part 72, and is effective as of the date of issuance. In accordance with 10 CFR Part 72, the PFSF license is issued for a term of 20 years, but the licensee may seek to renew the license prior to its expiration. The license authorizes PFS to provide interim storage in a dry cask storage system for up to 40,000 metric tons of uranium contained in intact spent fuel, damaged fuel assemblies, and fuel debris. The dry cask storage system authorized for use is a site-specific version of the HI-STORM 100 system designed by Holtec International, Inc., as more fully described in Materials License No. SNM-2513.

Background

Following receipt of PFS's application dated June 20, 1997, the NRC staff published a "Notice of Docketing, Notice of Proposed Action, and Notice of Opportunity for a Hearing for a Materials License for the PFSF in the Federal Register on July 31, 1997 (62 FR 41099). In conjunction with the issuance of this license, the staff and three cooperating Federal agencies (Bureau of Land Management, Bureau of Indian Affairs, and Surface Transportation Board) published the "Final 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 and the Related Transportation Facility in Tooele County, Utah," NUREG-1714 (December 2001) (FEIS). The FEIS considered the impacts of the construction, operation and decommissioning of the proposed ISFSI at the Skull Valley site and the impacts of certain transportation facilities which had been proposed by PFS. The FEIS indicated that the NRC staff and the three Cooperating Agencies had concluded, in part, that the overall benefits of the proposed PFSF outweigh the disadvantages and cost, and that the measures required by other permitting authorities and the mitigation measures proposed in the FEIS would eliminate or ameliorate any potential adverse environmental impacts associated with the PFS license application.

The safety and security of the proposed PFSF were addressed in a Safety Evaluation Report (SER) issued in December 2000 and two amendments thereto, as reissued in a consolidated SER in March 2002. Evidentiary hearings on the proposed license application were held before an Atomic Safety and Licensing Board in 2000, 2002 and 2004, and final adjudicatory decisions have been issued with respect to all contested issues in the proceeding.

In sum, the NRC has completed its environmental and safety reviews of the PFSF license application. Based on its review of the application and other pertinent information, the NRC issued Materials License No. SNM-2513 for the PFSF on February __, 2006.

Further details with respect to this action are provided in the application dated June 20, 1997, as amended; the staff's Final Environmental Impact Statement, dated December 2001; the staff's Consolidated Safety Evaluation Report, dated March 5, 2002; Materials License SNM-2513; the NRC's letter to the ACHP dated November 22, 2005; the ACHP's letter dated January 9, 2006; the NRC's letter to the ACHP dated _____, 2006; and other related documents, which are publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at:

<http://www.nrc.gov/reading-rm/adams.html>. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or

(301) 415-4737, or by e-mail to pdr@nrc.gov. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this th day of February, 2006.

FOR THE NUCLEAR REGULATORY COMMISSION

Stewart W. Brown, Senior Project Manager
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