

PROGRAMMATIC AGREEMENT AMONG THE BUREAU OF LAND MANAGEMENT,
THE UNITED STATES FOREST SERVICE, THE FEDERAL HIGHWAY ADMINISTRATION,
THE WYOMING STATE HISTORIC PRESERVATION OFFICER, AND THE ADVISORY
COUNCIL ON HISTORIC PRESERVATION, REGARDING THE GREEN RIVER DRIFT IN
SUBLETTE COUNTY, WYOMING

WHEREAS, the Green River Drift (Drift), 48SU7311, is an historic district listed in the National Register of Historic Places (NRHP) both under Criterion A and as a Traditional Cultural Property (TCP) (Appendix A-NRHP nomination form) and is located in Sublette County, Wyoming; and

WHEREAS, the boundaries of the Drift are defined in the NRHP nomination and are shown on the maps in Appendix B; and

WHEREAS, the Bureau of Land Management (BLM) and the United States Forest Service (USFS), as the federal agencies managing the public lands the Drift crosses, will provide for the long term protection, management and maintenance of this linear and contiguous historic district; and

WHEREAS, the Federal Agencies have determined that BLM shall be the lead agency for the development of this Programmatic Agreement (PA), which lays out the procedures for compliance with Section 106 of the National Historic Preservation Act (NHPA) according to 36 CFR § 800.14(b)(1)(ii); and

WHEREAS, the BLM has a multiple-use mandate and in accordance with applicable laws, policies and regulations, BLM will continue to issue decisions for activities within and proximal to the Drift including management of livestock grazing in accordance with the direction and objectives defined in 43 CFR § 4000; and

WHEREAS, the USFS has a multiple-use mandate and in accordance with applicable laws, policies and regulations, USFS will continue to issue decisions for activities within and proximal to the Drift including management of livestock grazing in accordance with the direction and objectives defined in 36 CFR § 222; and

WHEREAS, the Federal Highway Administration (FHWA) provides funding for routine construction and maintenance projects which could affect the Drift and therefore has responsibilities for compliance with Section 106 for such federal-aid highway projects; and

WHEREAS, the BLM, the USFS, the FHWA (the Federal Agencies), and the State Historic Preservation office (SHPO), have determined that future undertakings could affect the Drift; and

WHEREAS, this PA specifies the process by which the Federal Agencies will implement and complete Section 106 compliance regarding the effects of their undertakings on the Drift after the date this PA is executed; and

WHEREAS, the Section 106 regulations (36 CFR § 800.6) recognize three types of signatories to this agreement: **Signatories, Invited Signatories, and Concurring Parties**, which are referred to hereinafter as **the Parties**; and

WHEREAS, the BLM has consulted with the Wyoming State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. §470f) and 36CFR § 800.14(1)); and has invited them to participate as a Signatory and they have accepted; and

Programmatic agreement among the Bureau of Land Management, the United States Forest Service, the Federal Highway Administration, the Wyoming State Historic Preservation Officer, and the Advisory Council on Historic Preservation, regarding the Green River Drift in Sublette County, Wyoming

WHEREAS, the BLM has notified the Advisory Council on Historic Preservation (ACHP) per 36 CFR § 800.6(a)(1)(C) of the development of this PA and the ACHP has elected to participate per 36 CFR Part 800, Appendix A(c)(3) and they are a Signatory; and

WHEREAS, the BLM has invited the Wyoming Department of Transportation (WYDOT) to participate as a Concurring Party due to their responsibility of construction and maintenance of the state highway system and WYDOT has accepted; and

WHEREAS, the BLM has invited Ultra Resources Inc., Shell Western Exploration and Production Inc., (SWEPI LP.), and Questar Exploration and Production (QEP Energy Company) to participate as Concurring Parties owing to their involvement in the Anticline gas field that includes areas adjacent to and containing parts of the Drift and they have accepted; and

WHEREAS, the BLM has invited the Alliance for Historic Wyoming (AHW), Wyoming Association of Professional Archaeologists (WAPA), the Sublette County Historical Society (SCHS), and the Sublette County Historic Preservation Board (Certified Local Government) to participate as Concurring Parties due to their interests in historic preservation and they have accepted; and

WHEREAS, the BLM invited adjacent landowners to consult on this PA due to their proximity to and historic interest in the Drift and eleven have agreed to be Concurring Parties. All original adjacent landowners are listed in Appendix C; and

WHEREAS, the Parties acknowledge that actions carried out to maintain or improve the Drift will, over time, alter various segments and features of the district, but that most of these changes will not adversely affect the Drift when viewing the district as a whole; and

WHEREAS, private easements have been donated for the use of the Drift by many adjacent, local landowners which have contributed to the viability of this historic property; and

WHEREAS, by facilitating the ongoing maintenance, improvements, and upgrades to the Drift, the Federal Agencies, permittees, and members of the public ensure the Drift can continue to be used and developed for its purposes; and

WHEREAS, this PA only pertains to the Section 106 consideration of effects to the Drift itself, the consideration of an undertaking's effect to other historic properties within or outside the boundaries of the Drift will continue to be subject to Section 106 review; and

NOW, THEREFORE, the Federal Agencies, SHPO, and ACHP agree that the Federal Agencies will comply with Section 106 with regard to the effects of their undertakings on the Drift in accordance with the following stipulations.

STIPULATIONS

The Federal Agencies will ensure that the following stipulations are implemented:

I. SECTION 106 CONSULTATION PROCESS

- A. The Federal Agencies and SHPO agree that the following undertakings will have “no adverse effect” to the drift. The Federal Agencies and SHPO further agree that no further consultation Programmatic agreement among the Bureau of Land Management, the United States Forest Service, the Federal Highway Administration, the Wyoming State Historic Preservation Officer, and the Advisory Council on Historic Preservation, regarding the Green River Drift in Sublette

regarding "no adverse effect" determinations concerning the Drift is required for the following undertakings (additional exempt undertakings may be added to this PA per Stipulation III). For the purposes of this agreement, temporary is defined as one grazing season or less:

- (1) Undertakings that maintain the health of rivers and other waterways along the Drift, including those activities that may temporarily cause the path of the Drift to be modified or closed;
 - (2) Undertakings that maintain the overall health, safety, and integrity of the Drift by replacing and/or rehabilitating components of the Drift which allow it to continue to function (e.g. fencing, corrals, water sources, etc.);
 - (3) Temporary closure of the Drift (at the discretion of the authorized officer) due to delays in the issuance of grazing permits for continued use of the Drift for various reasons. Such lapses could be caused by delays in preparation of necessary NEPA documents, shortage of staff needed to process the grazing permit applications, etc.
 - (4) Issuance and/or development of new and existing oil and gas leases, activities of which may include but are not limited to; well pad, pipeline and access road construction actions, and long term use of infrastructure as long as it does not prevent the use of the Drift for its intended purpose.
 - (5) Permitting, licensing, financing, or approval of other types of development, (e.g. power lines, bicycle trails) along the Drift, as long as any disruption or prevention of the use of the Drift for its intended purpose is temporary.
 - (6) Routine construction and maintenance of the Federal and State transportation systems proximal to the Drift;
 - (7) Temporary or permanent seasonal restrictions to the use of the Drift due to Wildlife/Endangered Species Act (ESA) considerations;
 - (8) Routine maintenance to existing grazing improvements such as wells, stock ponds fences, and corrals;
 - (9) Changes to the setting of the Drift and will be exempt from further consideration under Section 106.
- B. Undertakings not included in the exemptions listed above will be subject to Section 106 consultation.
Undertakings may arise in the future that may be determined to be adverse effects, and may need further consultation. These include, but are not limited to:
- (1) Undertakings that prevent traditional use of the Drift for more than one grazing season;
 - (2) Alterations made to the following landmark/features
 - (a) Middle Mesa Well
 - (b) Cora Y Corrals
 - (c) Drift Fence at the Cora Y
 - (d) Red Gate

(3) Transfer, lease, or sale of the Drift or portions of the Drift out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance (36 CFR § 800.5(a)(2)(vii)).

II. DISPUTE RESOLUTION

A. Should any Signatory to this PA provide notice to the Federal Agencies of its objection to an action under this PA, or implementation of the measures stipulated in this PA, within 30 days of becoming aware of an action, the Federal Agencies shall consult with the Parties to this PA to resolve the objection. The objecting party must provide reasons for, and a justification of, its objection at the time it initially submits its objection to the Federal Agencies. If the Federal Agencies determine that the objection cannot be resolved, the Federal Agencies shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:

- (1) Provide the Federal Agencies with recommendations, which the Federal Agencies shall take into account in reaching a final decision regarding the dispute; or
- (2) Notify the Federal Agencies that it will comment within an additional 30 days, in accordance with 36 CFR § 800.7(c)(4). Any ACHP comment provided in response to such a request will be taken into account, and responded to, by Federal Agencies in accordance with 36 CFR § 800.7(c)(4).
- (3) If the objection cannot be resolved among the signatories and the objection arises from issues related to only National Forest System Lands or undertakings, the matter shall be referred to the BTNF Forest Supervisor. All other objections shall be referred to the Wyoming BLM State Director.

B. The Federal Agencies' responsibility to carry out all actions under this PA that are not the subject of the dispute will remain unchanged.

III. AMENDMENT

Any Party to this PA may request that the other Parties consider amending it if circumstances change over time and warrant revision of the stipulations. All Parties will be consulted during the amendment process. Amendments will go into effect when signed by the Federal Agencies, SHPO and the ACHP.

IV. TERMINATION

An individual Federal Agency may withdraw from the PA upon written notice to all Signatories and after having consulted with them for at least 30 days to attempt to find a way to avoid the withdrawal. Upon withdrawal, the Federal Agency will comply with Section 106 in accordance with 36 CFR § 800.3 through 800.7 or the execution of an agreement in accordance with 36 CFR § 800.14(b). Such Section 106 compliance will be limited to consideration of effects of the undertaking solely within the jurisdiction of the withdrawing Federal Agency. This PA will still remain in effect with regard to the portions of the undertaking located in the jurisdiction of the

Federal Agencies that have not withdrawn from the PA. If all Federal Agencies withdraw from the PA, the PA will be considered to be terminated.

V. SUNSET TERMS

This PA shall remain in effect for twenty (20) years after the date of execution hereof. The Federal Agencies, ACHP, SHPO and all Concurring parties shall meet to re-evaluate the PA every five (5) years. The term of this PA may be extended through amendment per Stipulation III.

VI. GENERAL PROVISIONS

A. ENTIRETY OF AGREEMENT

This PA, consisting of nine (9) pages and additional appendices, represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and agreements, whether written or oral regarding compliance with Section 106 of the National Historic Preservation Act for those aspects of future undertakings throughout the APE that will have adverse effects on this historic property.

B. PRIOR APPROVAL

This PA shall not be binding upon any Party unless this PA has been reduced to writing before performance begins as described under the terms of this PA, and unless the PA is approved as to form by the Attorney General or his representative.

C. SEVERABILITY

Should any portion of this PA be judicially determined to be illegal or unenforceable, the remainder of the PA shall continue in full force and effect, and any Party may renegotiate the terms affected by the severance.

D. SOVEREIGN IMMUNITY

The State of Wyoming and the WYSHPO do not waive their sovereign immunity by entering into this PA and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the PA.

E. INDEMNIFICATION

Each signatory to this PA shall assume the risk of any liability arising from its own conduct. Each Signatory agrees they are not obligated to insure, defend, or indemnify the other Signatories to this PA.

Execution of this PA by the Federal Agencies, SHPO, and ACHP and implementation of its terms is evidence that BLM has planned for management of the Drift, compliance with Section 106 for future undertakings that may affect the Drift and afforded the ACHP an opportunity to comment.

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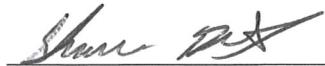
SIGNATURES

In witness whereof, the Parties to this PA through their duly authorized representatives have executed this PA on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA as set forth herein.

The effective date of this PA is the date of its execution. The PA is deemed to be executed when it has been signed by the ACHP, the Federal Agencies, and SHPO.

Signatories:

Bureau of Land Management, Pinedale Field Office



Shane DeForest, Field Manager

7-7-14

Date

Bureau of Land Management, Wyoming State Office



Buddy Green, Deputy State Director,
Resource Policy and Management

10-8-2014

Date

Federal Highway Administration



Joe Dailey, Wyoming Division Administrator

11/4/2014

Date

United States Forest Service, Bridger-Teton National Forest

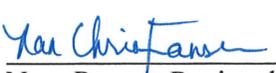


Clinton Kyhl, Forest Supervisor

8/5/2014

Date

United States Forest Service, Intermountain Region



Nora Rasure, Regional Forester

8/14/2014

Date

Wyoming State Historic Preservation Officer



Mary Hopkins, SHPO

11/5/14

Date

Advisory Council on Historic Preservation

for 
John M. Fowler, Executive Director

11/18/14
Date

Concurring Parties:

Wyoming Department of Transportation


John Cox, Director

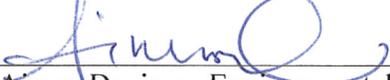
10-28-14
Date

Ultra Resources, Inc.


Erika Tokarz, Senior Environmental and Regulatory Representative

7/1/14
Date

SWEPI, LP


Aimee Davison- Environmental/Regulatory Asset Lead Pinedale

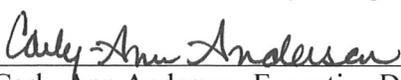
7-15-14
Date

QEP Energy Company


Jim Torgerson, Executive VP. QEP Energy

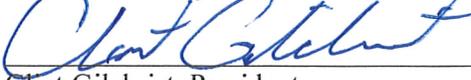
9/29/14
Date

Alliance for Historic Wyoming


Carly Ann Anderson, Executive Director

11/6/14
Date

Sublette County Historic Preservation Board (Certified Local Government)


Clint Gilchrist, President

7/2/14
Date

Wyoming Association of Professional Archeologists

Michael T. Bies
Michael T. Bies, President

7/5/2014
Date

Sublette County Historical Society

Geoff Sell
Geoff Sell, SCHS vice president

6/30/14
Date

Private ranchers and adjacent landowners

Albert Sommers

Date

Private ranchers and adjacent landowners

Charles C. Price
Charles Price

7/1/2014
Date

Private ranchers and adjacent landowners

James Noble

Date

Private ranchers and adjacent landowners

Dennis Gralund

Date

Private ranchers and adjacent landowners

Rita Donham
Rita Donham

7-23-2014
Date

Private ranchers and adjacent landowners

Peggy Bryant
Peggy Bryant

July 7, 2014
Date

Private ranchers and adjacent landowners

Jamie Burgess

Date

Wyoming Attorney General's Office, Approval as to Form:

S. Jane Caton #115145
S. Jane Caton,
Senior Assistant Attorney General

10-20-14
Date

Michelle Kahler for:
Douglas Moench,
Senior Assistant Attorney General

10-15-14
Date