

APPENDIX A
PROGRAMMATIC AGREEMENT

Draft: 2/09/2001

**Programmatic
Memorandum of Agreement
between
Wyoming State Historic Preservation Office
and
Bureau of Land Management Casper Field Office
Regarding the
PetroSource - Bairoil/Hartzog Draw CO₂ Pipeline**

WHEREAS, Petro Source Corporation of Houston, Texas (Petro Source) has applied to the Bureau of Land Management (BLM) for a right-of-way to construct a 155 mile CO₂ pipeline and related facilities in Wyoming; and

WHEREAS, according to provisions in the National Programmatic Agreement (1997), and the Wyoming Statewide Protocol (1998) this Programmatic Agreement is entered into by the BLM and Wyoming State Historic Preservation Office (SHPO). Concurring parties to this Agreement are Petro Source.

WHEREAS, between 1985 and 1991 Amoco Production Company (Amoco), Exxon Pipeline Company (Exxon), and Shell Pipeline Corporation (Shell) applied for and obtained a similar right-of-way grant by complying with all environmental and cultural resources requirements up to but not including initiation of construction; and

WHEREAS, the current parties involved in the project include BLM Casper Field Office (CFO), BLM Buffalo Field Office (BFO), BLM Lander Field Office (LFO), Wyoming State Historic Preservation Office (SHPO) and Petro Source Corporation; and

WHEREAS, the project crosses public lands administered by BLM Casper Field Office (CFO), BLM Buffalo Field Office (BFO) and BLM Lander Field Office (LFO), majority of lands crossed by the proposed pipeline are administered by CFO, CFO will take the project lead for BLM; and

WHEREAS, the cultural resource inventory, testing and mitigation that has been completed, reviewed and approved by the Advisory Council on Historic Preservation (ACHP), SHPO, and BLM satisfies the preconstruction requirements of the original 1985 Memorandum of Agreement; and

WHEREAS, changes in research focus may require modification of research design to address current data needs; and

WHEREAS, while PetroSource plans to construct the pipeline in two phases, Bairoil to Sussex in 2001 and Sussex to Hartzog Draw in 2002, the NEPA planning and cultural resource compliance will be handled as one project;

WHEREAS, construction of the proposed pipeline will affect historic properties on and adjacent to the right-of-way.

NOW, THEREFORE, BLM and Wyoming SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

Project Background

In the mid 1980s, Exxon, Amoco and Shell submitted a proposal to construct a gas pipeline and related facilities to transport CO₂ from the Bairoil Terminal (south of Jeffrey City, Wyoming) to Tioga, North Dakota for enhanced oil field recovery. As part of the compliance work to acquire the right-of-way, an Environmental Impact Statement was completed, and cultural resource inventory, testing, site evaluation, and preliminary mitigation work was carried out. A research design and treatment plan to address cultural resources was prepared to guide the cultural resources and paleontological work. The original proposal crossed multiple Federal jurisdictions in North Dakota, Montana, and Wyoming. A Memorandum of Agreement was signed by the Montana, North Dakota, and Wyoming State Historic Preservation Officers (SHPO), the Advisory Council on Historic Preservation (ACHP), and the Bureau of Land Management (BLM), with Exxon signing as a concurring party. The Agreement stipulated the measures required to properly take into account the effects of the pipeline project on historic properties. Larson-Tibesar Associates was engaged to conduct a cultural resources inventory and to prepare a treatment plan based on

their findings. Following completion of the inventory and reporting work, the project was cancelled. In 1990, Exxon reactivated the project, although scope was reduced to extend from Bairoil Terminal to Hartzog Draw (southwest of Gillette, Wyoming). At that time, BLM recommended additional inventory on the now-155 mile alignment. Archaeological Services/Western Wyoming College (now Western Archaeological Services, WAS) was hired to conduct the new inventory and to conduct evaluative testing on a number of sites. Site visits and consultation among BLM, SHPO, WWC and Exxon defined a treatment strategy which included an open trench inspection of the entire line, selecting certain sites for pre-construction mitigative excavation, and planning for additional detailed excavation of new sites that might be located in the trench wall. This work resulted in formulation of an updated treatment plan to properly handle significant prehistoric and historic sites within the area of potential effect.

In 1990 and 1991, the remaining pre-construction actions identified in the treatment plan were implemented, including identification of cultural properties on the finalized route, testing and evaluation of potentially eligible sites and those for which initial field assessment was inconclusive, and development of a research design and treatment plan to guide mitigation of affected historic properties. The treatment plan called for extensive data recovery at five prehistoric sites and an alignment change to avoid one historic ranch complex. Three sites were excavated and one avoided by project redesign. Access to the fifth site was denied by the landowner. Ultimately, an alternate route bypassing the site with no disturbance was identified and has been incorporated in the plan of development. In 1992, after the pre-construction fieldwork had been completed, the project was once again cancelled. In 1999, Petro Source submitted an application to construct a portion of the original Bairoil-Hartzog Draw pipeline, from Bairoil Terminal to the Sussex Field, southeast of Kaycee, Wyoming as Phase I scheduled for August 2001 construction and Sussex to Hartzog Draw as Phase II, tentatively scheduled for 2002 construction. The intent, with one exception, is to utilize the right-of-way corridor originally proposed by Exxon, so that all existing environment, cultural, and permitting procedures completed to date would not need to be duplicated. The exception is an additional seven mile lateral extending from the main line generally east to a point just north of Midwest, Wyoming.

Current Status

At present, several elements in the original agreement have been met. Required work satisfying stipulations I, II, III, and IV in the original "Final Memorandum of Agreement (Cultural Resources)" has been carried out and approved, where appropriate, by BLM, Wyoming SHPO and ACHP. This includes identification of cultural properties, testing and evaluation of cultural properties, and treatment plans for cultural properties. The pre-construction evaluative testing and data recovery operations outlined in the 1990 treatment plan (Project Treatment Plan for the Exxon Wyoming-Dakota CO2 Pipeline, Segment 2, Bairoil to Hartzog Draw, Wyoming) (Attachment A) have been completed and documented. In addition, a number of minor surveys were completed for re-routes and ancillary facilities. Attachment B contains documentation of review and concurrence.

The previous work has been reassessed for adequacy in terms of current policy and application of archaeological science. BLM has determined that the work completed to date is acceptable. In order to address current archaeological questions the treatment plan is being revised to reflect current theory and methods (Attachment C).

STIPULATIONS

BLM shall ensure that the following measures are carried out:

I. Procedures and Roles:

A. As the federal agency charged with permitting land use actions on public lands, the Bureau of Land Management is the project lead in managing cultural resource activities for this project. The major portion of the proposed pipeline crosses lands administered by the Casper Field Office, and this office will coordinate all review, compliance and consultation among the three Field Offices involved, and provide reports and review comments to SHPO for concurrence. The archaeological consultant will be responsible for all field work, analysis and report preparation.

B. All work set forth in this agreement will be carried out in accordance with this agreement and with the procedures detailed in the revised Treatment Plan.

II. New Inventory:

All areas of new disturbance associated with PetroSource construction shall be inventoried for cultural resources

prior to disturbance. These areas include, but are not limited to, additional access routes, staging areas and pipe storage areas not included in the original inventory work. Use of such areas by Petro Source shall not be approved until documentation has been received, reviewed and approved.

III. Monitoring of Construction Work:

Construction monitoring during topsoil stripping and right-of-way preparation will be conducted where the pipeline route crosses prehistoric site 48NA1060. Monitoring specifications and treatment of any cultural materials discovered during monitoring will be handled according to the Treatment Plan. This work will be done immediately following centerline staking and well in advance of trenching to provide sufficient time to identify, evaluate and treat any shallowly subsurface materials that might be exposed during topsoil stripping.

IV. Ditches and irrigations systems:

Irrigation ditches were not recorded in the original inventories. At least one such ditch was noted at 48NA1060 and others may be present elsewhere along the right-of-way corridor. Wyoming State Engineer's water adjudication tables will be searched to identify ditches appropriated at over 7 cfs, and these will be recorded and evaluated prior to construction. Ditches of 7 cfs or less will be identified, examined during the open trench inspection phase, and documented in the final report per the Wyoming Statewide Protocol, Appendix D-2.

IV. Open Trench Inspection:

Inspection of open trenches (OTI) for evidence of buried cultural properties will be conducted for the entire pipeline length except where impractical, such as road crossings. All newly discovered cultural resources will be recorded and a datum established outside the pipeline construction corridor to facilitate relocation. Pipe installation and covering may proceed through the area once preliminary documentation is completed. All open trench inspection activities will be governed by the Treatment Plan. These activities include: open trench inspection, geomorphological analysis, evaluative testing, and proposed mitigation.

V. Treatment of Cultural Materials:

The project treatment plan will be followed and will include:

- ◇ recording of new discoveries
- ◇ evaluation of new discoveries
- ◇ determination of resources to be mitigated
- ◇ 600 squares of mitigation applied to Phase I
- ◇ mitigation needs (required squares) for Phase II to be determined on completion of Phase II OTI and evaluation

Implementation of the plan will mitigate effects from pipeline construction on significant cultural resources.

VI. Reporting on the Investigations of Cultural Properties:

A. Reports will conform to the guidelines in the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation*. BLM Casper Field Office will consolidate report review comments and submit to SHPO for concurrence. Scheduling of reports will take into account the amount of data recorded or analyses required, and other factors related to the reporting effort. The scheduling goal is to achieve timely, high quality reporting. Reporting shall consist of interim reports at the conclusion of a fieldwork activity and a final report dealing with open trench inspection and data recovery for the two proposed construction phases.

B. Report Schedule:

1. Interim reports

Interim reports shall be submitted within 60 calendar days of completion of each phase of fieldwork. Minimally, each report will summarize the activities conducted and will list fieldwork dates, field personnel, identify the area examined, list sites encountered with brief description, and provide a discussion of the results and preliminary assessments. The preliminary reports are intended as management summaries and are not expected to be an exhaustive treatment of the data. Letter format will be acceptable, providing sufficient detail is provided.

2. Final Report

DA final report shall be submitted in draft form no later than two (2) years after conclusion of the fieldwork. BLM will review the draft report and return to the cultural resources consultant within 60 calendar days. Consultant will make corrections and revisions and submit the final version within 60 calendar days. The final report organization and contents shall conform to Secretary of Interior guidelines.

Minimally, the report shall contain:

abstract
intro/project history/timeline
personnel, position, and of service

Rcultural environment
physical environment

methodology
results/integrate with research questions

project synthesis (shall include all relevant data from this and adjacent projects)

Should it prove impossible to meet the report schedule, a new due date may be negotiated and an amendment made to this Agreement by following the procedures identified below.

A VII. Policy on Landowner Denial of Access for Cultural Resource Work:

Should landowner denial of access to conduct cultural resource investigations occur, BLM shall attempt to resolve the problem. In the event that no agreement can be reached regarding access, BLM will consult with SHPO and ACHP to address adverse effects.

VIII. Curation:

FA. Collected cultural materials will be stabilized, labeled, and catalogued. Materials from BLM lands will be stored according to existing curation agreements.

B. The disposition of cultural materials from private lands will be determined by the landowner, after all analysis is completed. If the landowner wishes the materials to remain in government possession, a receipt for donation (or other appropriate documentation) will be provided the landowner and the artifactual materials will be curated per stipulation VII.A above.

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IX. Human Remains:

Treatment of any human remains will be guided by NAGPRA and in consultation among the appropriate Native Americans, BLM and SHPO. BLM will contact local law enforcement authorities to determine whether or not any remains constitute a crime scene. Once determined to be archaeological in nature, human remains will be left in

place and security measures established until the proper approach to removal is agreed upon by BLM, SHPO and affected tribes. On discovery of human remains, all construction work shall cease within 100 m (328 ft) radius of the find.

X. Native American Consultation:

The views of relevant Native American tribal groups shall be solicited according to current policy and as required under National Historic Preservation Act (as amended) and the National Programmatic Agreement.

XI. Dispute Resolution:

Should there be disagreement regarding the implementation of this Agreement, the disagreeing parties will consult with the Council. Sufficient information regarding the disagreement will be forwarded to the Council and the Council will make its recommendations within 15 working days from receipt of the documentation. The BLM and Applicant will adhere to the Council's recommendation or notify the Council's Executive Director as to why the recommendation cannot be followed and request that he ask the Chairman to schedule the issue for consideration at a Council meeting. Until the Chairman has responded or the Council has provided its comments, the BLM and Applicant will not take any action regarding the disputed issue that may affect cultural properties eligible for the National Register or properties that are unevaluated. Other aspects of this Agreement about which there is no disagreement may be implemented during the period of the dispute resolution.

XII. Failure to Carry Out the Terms of the Agreement:

Failure to carry out the terms of this Agreement requires that the BLM request the Council's comments in accordance with 36CFR800. If the BLM or Applicant cannot carry out the terms of this Agreement, no actions shall be taken or sanctioned that would result in an adverse effect with respect to cultural properties which may be eligible for the National Register covered by this Agreement or that would foreclose the Council's consideration of modifications or alternatives to the project which would avoid or mitigate the adverse effect until the process has been completed.

XIII. Amendment to this Agreement:

If any of the signatories to this Agreement determines that the terms of this Agreement cannot be met or believes a change is necessary, that signatory shall immediately request the consulting parties in writing to consider an amendment or addendum to this Agreement. Any amendment or addendum will be signed by the signatories to this Agreement and it shall be executed in the same manner as the original Agreement.

XIV. Reporting on the Fulfillment of this Agreement:

Within 90 days after carrying out the terms of this Agreement, BLM will provide a written report to all signatories to the Agreement on actions taken to fulfill the terms of this Agreement.

Execution of the Memorandum of Agreement by the Bureau of Land Management and the Wyoming State Historic Preservation Officer, and implementation of its terms, evidences that the Bureau of Land Management has afforded SHPO an opportunity to comment on the proposed undertaking and its effects upon historic properties, and that the Bureau of Land Management has taken into account the effects of the undertaking on historic properties.

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Signatures

Bureau of Land Management

By: _____ Date: _____

Wyoming State Historic Preservation Officer

D

By: _____ Date: _____

Concur:
PetroSource, Incorporated

By: _____ Date: _____

R

Invited parties: (currently unspecified)

By: _____ Date: _____

A

By: _____ Date: _____

Attachments:

Attachment A: 1985 Programmatic Agreement
Attachment B: evidence of prior concurrence
Attachment C: Treatment Plan

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