

Appendix E

Cultural Resources Programmatic Agreement

**PROGRAMMATIC AGREEMENT AMONG
THE BUREAU OF LAND MANAGEMENT,
WYOMING STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND POWER COMPANY OF WYOMING, LLC
REGARDING ADVERSE EFFECTS TO HISTORIC PROPERTIES
RESULTING FROM THE
CHOKECHERRY AND SIERRA MADRE WIND ENERGY PROJECT
IN CARBON COUNTY, WYOMING**

WHEREAS, Power Company of Wyoming, LLC (hereinafter PCW) proposes to construct and operate wind turbines and associated facilities within the Chokecherry and Sierra Madre Wind Energy Project Area (Undertaking) located in Carbon County, Wyoming; and

WHEREAS, the Bureau of Land Management (BLM) has prepared and issued a Final Environmental Impact Statement (FEIS) for the Undertaking in connection with considering the issuance of rights-of-way (ROW) for development activities within the Area of Potential Effects (APE), and the requested rights-of-way are for a term of 30 years with the option to renew; and

WHEREAS, a historic property is any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP) as defined at 36 CFR 800.16(1)(1); and

WHEREAS, the *Programmatic Agreement among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which BLM Will Meet Its Responsibilities Under the National Historic Preservation Act, State Protocol Between the Wyoming Bureau of Land Management State Director and the Wyoming State Historic Preservation Officer* (hereinafter State Protocol), is incorporated herein by reference; and

WHEREAS, the BLM, in consultation with the Wyoming State Historic Preservation Officer (WYSHPO) and other consulting parties, has defined the APE for the Undertaking based on direct, indirect, and cumulative effects to historic properties and their associated settings as applicable, as defined by the State Protocol Part IV (B), to include the areas identified in Appendix A; and

WHEREAS, the BLM has determined that the Undertaking will have adverse effects on historic properties within the APE, including the Overland Trail (48CR932), North Platte Crossing and Cemetery (48CR432), Sage Creek Stage Station (48CR463), Pine Grove Stage Station (48CR430), Pine Grove Cemetery (48CR9315), Bridger Pass (48CR462), and the Lincoln Highway (48CR1191); and

WHEREAS, effects to the Parco Historic District (48CR1197), Rawlins Residential Historic District (48CR7277), Rawlins Downtown Historic District (48CR4221), and the Wyoming State Penitentiary (48CR1198) cannot be fully determined and the process to assess these effects is addressed in this PA; and

WHEREAS, this Programmatic Agreement (PA) establishes measures to avoid, minimize, and mitigate adverse effects resulting from the Undertaking to the identified historic properties within the APE; and

WHEREAS, effects on all historic properties cannot be fully determined prior to approval of the Undertaking (36 CFR 800.14(b)(1)(ii)), and the BLM has determined that a phased process for compliance with Section 106 of the National Historic Preservation Act (NHPA) is appropriate for the Undertaking, as specifically permitted under 36 CFR 800.4(b)(2), such that completion of the identification and evaluation of historic properties, determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out in phases, as set forth in this PA, as part of planning for and prior to granting any rights-of-way or notices to proceed; and

WHEREAS, cultural resource identification efforts that have been completed for the Undertaking include background research of the existing records, a Class II sample inventory, Class III inventories for the site testing and monitoring facilities, a historical assessment of the Overland Trail, a visual effects assessment, and a preliminary Class III inventory based on the original project proposal; and

WHEREAS, the State Protocol Part VII recognizes two types of signatories to this PA: **Consulting Parties** and **Invited Concurring Parties**, which together are referred to as **the Parties**. Consulting Parties include any party who assumes responsibilities under this PA. Invited Concurring Parties have a demonstrated interest in the historic properties but do not assume responsibilities under this PA. Invited Concurring Parties may participate in development of the document and may concur with this PA. However, the refusal of an Invited Concurring Party to sign does not invalidate this PA and Invited Concurring Parties cannot terminate this PA; and

WHEREAS, the BLM recognizes its government-to-government obligation to consult with Indian tribes that may attach religious and cultural importance to historic properties that may be affected by the proposed Undertaking and has consulted and continues to consult with the Eastern Shoshone Tribe; the Northern Arapaho Tribe; the Ute Tribe of the Uintah & Ouray Reservation; the Northern Cheyenne Tribe; and the Fort Peck Assiniboine and Sioux Tribes regarding their concerns under Section 106 of the NHPA; and

WHEREAS, the BLM has consulted with the WYSHPO pursuant to the State Protocol and the WYSHPO is a Consulting Party; and

WHEREAS, the BLM has notified the Advisory Council on Historic Preservation (ACHP) according to Section 5.b(3) of the *Programmatic Agreement among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which BLM Will Meet Its Responsibilities Under the National Historic Preservation Act* (executed on February 9, 2012) of the adverse effects resulting from this Undertaking and the ACHP has elected to participate in the Section 106 consultation for the Undertaking and is a Consulting Party; and

WHEREAS, PCW, as potential grantee of the rights-of-way, has participated in consultation, and agrees to carry out the stipulations of this PA under oversight of the BLM, and is a Consulting Party to this PA; and

WHEREAS, the BLM has invited the Eastern Shoshone Tribe; the Northern Arapaho Tribe; the Ute Tribe of the Uintah & Ouray Reservation; the Northern Cheyenne Tribe; and the Fort Peck Assiniboine and Sioux Tribes (herein after Tribes) to be Invited Concurring Parties to this PA, and they have accepted; and

WHEREAS, the BLM has invited the Oregon-California Trails Association (OCTA), the Alliance for Historic Wyoming (AHW), TRACKS Across Wyoming (TRACKS), the City of Rawlins Certified Local Government (CLG), Wyoming Frontier Prison, and Carbon County to participate as Invited Concurring Parties to this PA, and they have accepted; and

WHEREAS, some of the historic properties that will be adversely affected are located on private lands owned by the Overland Trail Cattle Company, LLC and the BLM has invited the Overland Trail Cattle Company, LLC to participate and it has declined; and

WHEREAS, Pine Grove Stage Station, Pine Grove Cemetery, and contributing segments of the Overland Trail are located on the Pine Grove Station property and the BLM has invited the landowner to participate as an Invited Concurring Party and they have accepted; and

NOW, THEREFORE, the BLM, WYSHPO, ACHP and PCW agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

STIPULATIONS

The BLM shall ensure that the following measures are implemented:

I. GENERAL STIPULATIONS

- a. The BLM shall ensure that all identification, evaluation, and treatment activities conducted pursuant to this PA are carried out by, or under the direct supervision of, persons that have been permitted for such work by the BLM under the authority of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-mm) (ARPA) and its regulations (43 CFR 7).
- b. PCW shall fund all required fieldwork, analysis, reporting, curation, and mitigation necessary to comply with this PA, the State Protocol, and Section 106 of the NHPA.

II. CONTINUING IDENTIFICATION EFFORTS, DETERMINATIONS OF ELIGIBILITY, AND ASSESSMENTS OF EFFECT

Consistent with the phased process for Section 106 compliance under this PA, PCW shall submit up to five separate ROW applications with associated site-specific plans of development (POD) to the BLM for the internal haul road, rail facility, transmission line

between the two sites, Sierra Madre development, and Chokecherry development. BLM shall identify historic properties for which it has not yet reached a determination of effect and assess effects to those historic properties from the activities proposed in the PODs consistent with the following procedures:

a. Identification of Historic Properties

1. BLM shall seek information, as appropriate, from the Parties likely to have knowledge of, or concerns with, historic properties in the APE, and identify issues relating to the Undertaking's potential effects on historic properties.
2. BLM shall gather information from the Tribes to assist in identifying properties within the APE which may be of religious and cultural importance to them and may be eligible for the NRHP. Based on the information gathered, and in consultation with the Tribes, BLM shall take the steps necessary to identify historic properties of traditional religious and cultural importance within the APE.
3. A Class III cultural resources inventory will be conducted for those portions of the APE identified for each POD, if such areas have not been previously adequately inventoried.

b. Determination of Eligibility

BLM shall evaluate cultural resources identified within the APE for eligibility for the NRHP using the National Register Criteria for Evaluation (36 CFR 60). BLM, in consultation with the Tribes, shall evaluate properties of traditional religious and cultural importance for eligibility for the NRHP. The BLM shall determine NRHP eligibility and seek concurrence from the WYSHPO pursuant to Stipulation II.d of this PA.

c. Assessment of Effects

1. BLM shall make determinations of effect for and identify any adverse effects to historic properties within those portions of the APE identified for each POD. BLM, in consultation with the Tribes, shall make determinations of effect for and identify any adverse effects to historic properties of traditional religious and cultural importance within those portions of the APE identified for each POD.
2. Upon review of the Chokecherry POD, BLM shall make final determinations of effect for the Parco Historic District (48CR1197), Rawlins Residential Historic District (48CR7277), Rawlins Downtown Historic District (48CR4221), and the Wyoming State Penitentiary (48CR1198) in accordance with Stipulation II.d of this PA.

d. Reporting, Review, and Consultation

1. All cultural resource inventory reports and documentation will meet the Secretary of the Interior's Standards for Archaeology and Historic Preservation (48 FR 44716-42) and WYSHPO standards.

2. PCW, through its cultural resource consultant, shall submit copies of the cultural resource inventory reports to the BLM for each phase of fieldwork described in Stipulation II of this PA. The BLM will review the reports and will consult with the Parties in accordance with the following:
 - A. If the BLM determines that no historic properties are present, the BLM shall submit documentation of the finding to the WYSHPO and proceed with authorization of the POD.
 - B. If historic properties, eligible under only NRHP Criterion D, are identified but BLM determines they will not be affected or that they will not be adversely affected by the activities proposed in the POD, the BLM shall submit documentation of the finding to the WYSHPO and proceed with authorization of the POD.
 - C. If historic properties, eligible under NRHP Criterion A, B or C, are identified but BLM determines either that they will not be affected or that they will not be adversely affected by the activities proposed in the POD, the BLM shall submit documentation of eligibility and effect to the WYSHPO. The WYSHPO shall review and comment on the eligibility and effect within 30 days of receipt of the documentation. If the WYSHPO does not respond within 30 days, BLM may assume concurrence with determinations of eligibility and effect and proceed with authorization of the POD.
 - D. If historic properties, not addressed under Stipulation III.c of this PA, are identified and BLM determines that they will be adversely affected by the activities proposed in the POD, the BLM shall submit documentation of eligibility and effect to the Parties. The Parties shall review and comment on the eligibility and effect within 30 days of receipt of the documentation. If a Party does not respond within 30 days, BLM may assume concurrence with determinations of eligibility and effect.
 - E. If a determination is made that one or more historic properties will be adversely affected by the activities proposed in the POD, a mitigation plan will be developed as specified in Stipulation III.b of this PA.

III. AVOIDANCE, MINIMIZATION and MITIGATION of ADVERSE EFFECTS

a. Avoidance and Minimization of Adverse Effects

1. PCW shall implement the best management practices and applicant committed measures identified in Appendix B to avoid and/or minimize any potential adverse effects to historic properties within the APE.
2. The BLM, in coordination with PCW, shall make a reasonable and good faith effort to further avoid and/or minimize any potential adverse effects to historic properties within the APE, including properties of traditional religious and cultural importance to the Tribes, through project design, redesign, relocation of facilities, or by other means in a manner consistent with this PA. Any avoidance and/or minimization measures will be incorporated as terms and conditions in the authorization for each POD.

3. PCW and BLM, in consultation with the WYSHPO and the Tribes, shall ensure that all personnel, including contractors, inspectors and monitors, receive training regarding the sensitivity of all cultural resources, both Native American and historic properties not of tribal significance and in regards to Native American issues in general. PCW shall cooperate with the BLM to ensure compliance with the Archaeological Resources Protection Act (ARPA) of 1979 (16 U.S.C. 470) on public lands, and with Wyoming Statute §36-1-115 on state lands.

b. Mitigation of Adverse Effects Identified During Review of the Site-Specific PODs

1. If the BLM determines that the measures identified pursuant to Stipulation III.a of this PA do not adequately avoid and minimize the adverse effects to historic properties from the activities proposed in a POD, BLM shall consult with the Parties to identify those measures to be implemented by PCW to mitigate adverse effects on affected historic properties. BLM shall consult with the Tribes regarding mitigation of adverse effects to historic properties of traditional religious and cultural importance. Mitigation will be commensurate with the nature and significance of the cultural resources involved and the extent of the possible direct, indirect, and cumulative effects.
2. The BLM, in consultation with the Parties and Tribes, shall ensure that plans are developed by PCW that outline mitigation for adverse effects to historic properties, including properties of traditional religious and cultural importance to the Tribes, which are identified for each POD. Separate mitigation plans may be developed for each POD based on identification of adverse effects related to that POD.
3. PCW shall submit the mitigation plan(s) to the BLM who will consult the Parties and Tribes as appropriate. The Parties will review and comment on the mitigation plan(s) within 30 days of receipt of the documentation. If a Party does not respond within 30 days, BLM may assume concurrence with the mitigation plan(s). PCW will work with the BLM to address comments and recommendations in preparation of the final mitigation plan(s).
4. Upon final acceptance by the BLM with WYSHPO concurrence, the mitigation plan(s) shall be appended to this PA and the mitigation measures will be completed prior to authorization of disturbance by the BLM except as allowed under Stipulation IV of this PA.

c. Compensatory Mitigation for Known Adverse Effects

1. A committee to develop Compensatory Mitigation Plan(s) (CMP) will include the Consulting Parties or their authorized representative(s), and any Invited Concurring Parties that choose to participate. The Rawlins Field Manager shall convene the committee within 90 days of execution of this PA. The committee shall also develop recommendations for standards for approval of the CMP(s). The Consulting Parties on the committee will be responsible for the final recommendations. The Rawlins Field Manager, with WYSHPO concurrence, will have final authority on approval of

committee recommendation(s). Within 30 days of approval, the CMP(s) will be appended to this agreement. A copy of the CMP(s) will be mailed to all Parties. Failure to reach agreement on the CMP(s) prior to authorization of the Sierra Madre and/or Chokecherry PODs will result in nullification of this PA. Should the PA be nullified, any remaining adverse effects to the historic properties will be addressed pursuant to the State Protocol. The committee shall meet annually and/or as needed to evaluate implementation of the CMP(s) and determine when mitigation is complete.

2. To mitigate adverse effects from the Undertaking to the Overland Trail (48CR932), North Platte Crossing and Cemetery (48CR432), Sage Creek Stage Station (48CR463), Pine Grove Stage Station (48CR430), Pine Grove Cemetery (48CR9315), Bridger Pass (48CR462), and the Lincoln Highway (48CR1191), PCW shall complete the mitigation measures described in the CMP developed pursuant to Stipulation III.c.1.
3. If, based on the assessment of effects identified in Stipulation II.c.2 of this PA, the BLM determines that there will be adverse effects to the Parco Historic District (48CR1197), Rawlins Residential Historic District (48CR7277), Rawlins Downtown Historic District (48CR4221), and/or the Wyoming State Penitentiary (48CR1198), an additional CMP will be developed in the same manner as that identified in Stipulation III.c.1 of this PA.

IV. INITIATION OF CONSTRUCTION ACTIVITIES

- a. The BLM may issue a ROW grant or Notice to Proceed (NTP) for a POD pursuant to Stipulations II.d.2.A or B of this PA.
- b. If, upon review of the PODs pursuant to Stipulation II of this PA, the BLM determines that the activities only within a portion of a proposed POD will cause adverse effects to historic properties, the BLM may issue a ROW grant or Notice to Proceed (NTP) for other portions of the POD that will not adversely affect historic properties under the following conditions:
 1. If the BLM, in consultation with the WYSHPO, determines that no historic properties are present within the APE for that portion of the POD; or
 2. If the BLM, in consultation with the WYSHPO, determines that historic properties are present within the APE for that portion of the POD, but will not be affected, or will not be adversely affected; or
 3. If the BLM has approved a mitigation plan pursuant to Stipulation III.b or III.c of this PA to mitigate the identified adverse effects, and PCW has complied or is complying with the terms of the mitigation plan.
- b. BLM may only issue a ROW or NTP for a portion of a POD if the authorized activities will not preclude the BLM's or PCW's ability to re-site or re-locate other activities proposed in the POD to avoid adverse effects to historic properties

V. DISCOVERIES

A Discovery Plan shall be appended to this PA upon acceptance by the BLM with concurrence by the WYSHPO. Until a Discovery Plan has been appended to this PA, the BLM shall follow the procedures at 36 CFR 800.13.

a. Inadvertent Discoveries of Cultural Resources

1. If any previously unknown cultural resources, including archaeological, are discovered during implementation of the Undertaking, all construction activities will cease within 150 feet of the area of discovery and the BLM Authorized Officer will be notified of the find. BLM will implement the Discovery Plan to evaluate and, if necessary, mitigate the effects from the new discovery.
2. Construction will not resume in the area of discovery unless the BLM Authorized Officer has issued a written notice to proceed.

b. Inadvertent Discoveries of Human Remains

1. The BLM and PCW shall ensure that in the event human remains are discovered during implementation of the Undertaking, all work within 300 feet of the discovery will cease, the area will be secured, and the BLM authorized officer will be immediately contacted. The BLM shall notify the Carbon County Sheriff's Office and Coroner's Office of the discovery.
2. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR § 10), and consistent with the Discovery Plan. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on state or private land will be handled in accordance with applicable law and the Discovery Plan. Non-Native American human remains found on federal, state, or private land will also be treated in accordance with applicable law and the Discovery Plan. The BLM and PCW recognize that any human remains, funerary objects, sacred objects, or items of cultural patrimony encountered during construction should be treated with dignity and respect.

VI. ONGOING TRIBAL CONSULTATION and COORDINATION

- a. The BLM shall continue to consult with the Tribes throughout the Undertaking and shall continue to coordinate with the Tribes to schedule government-to-government meetings with tribal representatives. The Tribes shall be invited to participate in the identification and evaluation, of historic properties of traditional religious and cultural importance to the Tribes, and the development of any mitigation plans necessary to mitigate adverse effects to those properties. Any information provided by the Tribes on sites of traditional religious and cultural importance will remain confidential to the fullest extent permitted by law.

- b. The BLM shall coordinate with the Tribes to visit sites of known or potential tribal interest within the APE. The BLM shall consider additional sites identified by the Tribes for further coordination and consultation, including but not limited to site visits by tribal representatives to identify, evaluate eligibility of and effects on, and convey tribal knowledge regarding properties of traditional cultural and religious importance.

VII. CONFIDENTIALITY of CULTURAL RESOURCE DATA

To the extent consistent with NHPA Section 304, and the ARPA Section 9(a), cultural resource data from BLM-managed lands will be treated as confidential by all Parties and is not to be released to any person, organization, or agency not a Party to this PA. Duplication or distribution of cultural resource data from BLM-managed lands by any Party requires written authorization from the BLM Rawlins Field Manager. Confidentiality concerns for properties that have traditional religious and cultural importance to the Tribes will be respected and will remain confidential to the fullest extent permitted by law.

VIII. ANNUAL REPORT and EVALUATION

- a. On or before January 1 of each year, until the Consulting Parties agree in writing that the terms of this PA have been fulfilled, PCW shall prepare and provide a letter report to the BLM detailing how the applicable terms of the PA are being implemented. Upon acceptance, the BLM shall provide this annual report to all Parties. The Parties may provide comments on the report to the BLM within 30 days of receipt, and the BLM will distribute all comments to the Parties.
- b. The BLM shall coordinate a meeting or conference call of the Parties 30-60 days after providing the annual report for the first five (5) years, and every third year after that, unless the Consulting Parties agree to another timeframe. The purpose is to review implementation and achieved outcomes of the terms of this PA and to discuss the annual report, as needed. The Parties shall determine whether amendments are needed to improve the effectiveness of this PA.

IX. DISPUTE RESOLUTION

- a. If there is an objection by any Party to the manner in which the terms of the PA are implemented, the objecting Party will notify the BLM Rawlins Field Manager in writing of the objection. The BLM Rawlins Field Manager will notify all other Parties of the objection. All Parties will consult to resolve the objection.
- b. Resolution of the objection will be documented in a written resolution and distributed to all Parties by the BLM Rawlins Field Manager. If a Party fails to respond within 30 days of receipt of the written resolution, concurrence with the resolution will be assumed by the other Parties and the resolution will go into effect. If resolution of the objection requires an amendment to the PA, it will be done as described in Stipulation X of this PA.

- c. If the objection cannot be resolved among the Parties, the matter shall be referred to the BLM Wyoming State Director. The BLM Wyoming State Director may consult with the BLM Preservation Board on the matter. The BLM State Director will notify all Parties in writing of the recommendation of the BLM Preservation Board. Within 15 days of notification, any Party may request consultation among all Parties regarding the recommendations of the BLM Preservation Board. The final decision for resolution of the objection by any Party shall be made by the BLM State Director and provided to the Parties.
- d. The BLM Rawlins Field Manager shall consider all objections to the manner in which the terms of the PA are implemented by individuals or groups that are not a Party to this PA. If the objection cannot be resolved to the satisfaction of the BLM and the objecting individual or group, the BLM Rawlins Field Manager shall request all Parties to provide their opinion on the matter. Prior to making a final decision on the matter, the BLM Rawlins Field Manager shall take into account all Parties' opinions received within 15 days of the request. The final decision for resolution of any objections by individuals or groups that are not a Party to this PA shall be made by the BLM Rawlins Field Manager.
- e. Nothing in this Section shall be construed or interpreted as a waiver of any judicial remedy that would be available to any Party to this PA.

X. AMENDMENT

Any Party to this PA may request that the Consulting Parties consider amending the PA if circumstances change over time and warrant revision of the stipulations. The BLM shall notify all Consulting Parties of the proposed amendment and consult to reach agreement within 30 days. Amendments shall be executed in writing and shall be signed by all Consulting Parties in the same manner as the original PA.

XI. TERMINATION

Any Consulting Party to this PA may initiate termination of this PA by providing written notice to the other Parties of its intent. After notification by the initiating Consulting Party, the Consulting Parties shall have 30 days, or other period as agreed to by the Consulting Parties, to seek agreement on amendments or any other actions that would address the issues and avoid termination. The Consulting Parties must consult with Invited Concurring Parties when seeking agreements on amendments or any other actions that would address the issues and avoid termination. In the event of termination, the BLM shall refer to State Protocol to address any remaining adverse effects to historic properties treated under this PA, or consult to create a new agreement. Any Invited Concurring Party to this PA may withdraw their concurrence at any time by written notice, but such withdrawal will not terminate the PA or affect it in any way.

XII. DURATION

Unless this PA is terminated pursuant to Stipulation XI above, another agreement executed for the Undertaking supersedes it, or the Undertaking itself has been terminated, this PA

will remain in full force and effect until BLM, in consultation with the Consulting Parties, determines that construction of all aspects of the Undertaking have been completed and that all terms of this PA have been fulfilled in a satisfactory manner, not to exceed ten (10) years from the date of execution, unless each of the Consulting Parties agrees to extend the term hereof through an amendment per Stipulation X of this PA. This PA will expire if the Undertaking has not been initiated and the BLM right-of-way grant expires or is withdrawn.

XIII. GENERAL PROVISIONS

- a. Entirety of Agreement.** This PA, consisting of fifteen (15) pages, 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.
- 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 Wyoming Attorney General or his or her 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 or governmental immunity by entering into this PA, and the Tribes do not waive their sovereign immunity by concurring with 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 this PA.
- e.** Each Party to this PA shall assume the risk of any liability arising from its own conduct. Each Party agrees they are not obligated to insure, defend or indemnify the other Parties to this PA.

Execution of this PA and implementation of its terms evidences that the BLM has taken into account the effects of the Undertaking on historic properties.

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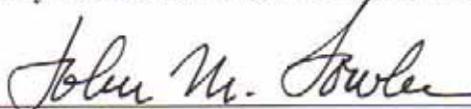
SIGNATURES

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 the signature by the Executive Director of the ACHP.

Consulting Parties:

Advisory Council on Historic Preservation



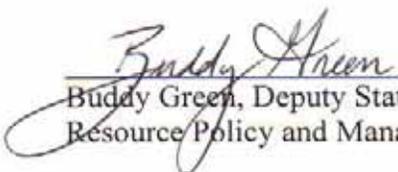
John M. Fowler, Executive Director 8/23/12
Date

Bureau of Land Management, Rawlins Field Office



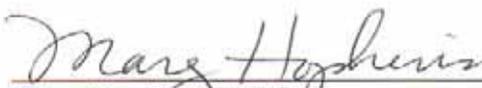
Dennis Carpenter, Field Manager 8/15/12
Date

Bureau of Land Management, Wyoming State Office



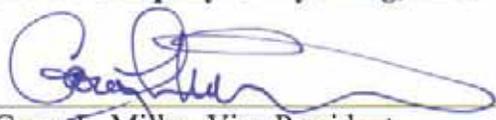
Buddy Green, Deputy State Director,
Resource Policy and Management 8/15/12
Date

Wyoming State Historic Preservation Officer



Mary Hopkins, SHPO 8/17/12
Date

Power Company of Wyoming, LLC.



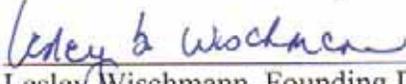
Garry L. Miller, Vice President,
Land and Environmental Affairs 8/20/2012
Date

Invited Concurring Parties:

Oregon-California Trails Association

Leslie Fryman, Preservation Officer Date

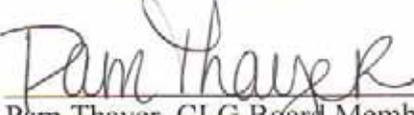
Alliance for Historic Wyoming

 _____ 8/17/2012
Lesley Wischmann, Founding Director Date

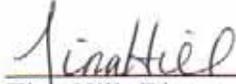
TRACKS Across Wyoming

 _____ 8/16/2012
Charles Lanham, President Date

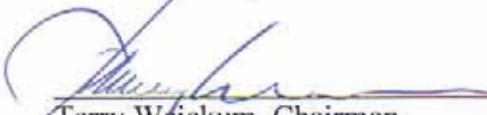
Landmark Committee – City of Rawlins Certified Local Government

 _____ 8/16/12
Pam Thayer, CLG Board Member Date

Wyoming Frontier Prison

 _____ 8/15/12
Tina Hill, Director Date

Carbon County

 _____ 8-16-12
Terry Weickum, Chairman,
Carbon County Commissioners Date

Pine Grove Station

Bruce Thayer, Landowner Date

Eastern Shoshone Tribe of the Wind River Reservation

Mike Lajeunesse, Chairman Date

Northern Arapaho Tribe

Jim Shakespeare, Chairman Date

Ute Tribe of the Uintah and Ouray Reservation

Irene Cuch, Chairperson Date

Northern Cheyenne Tribe

Leroy Spang, President Date

Ft. Peck Assiniboine and Sioux Tribes

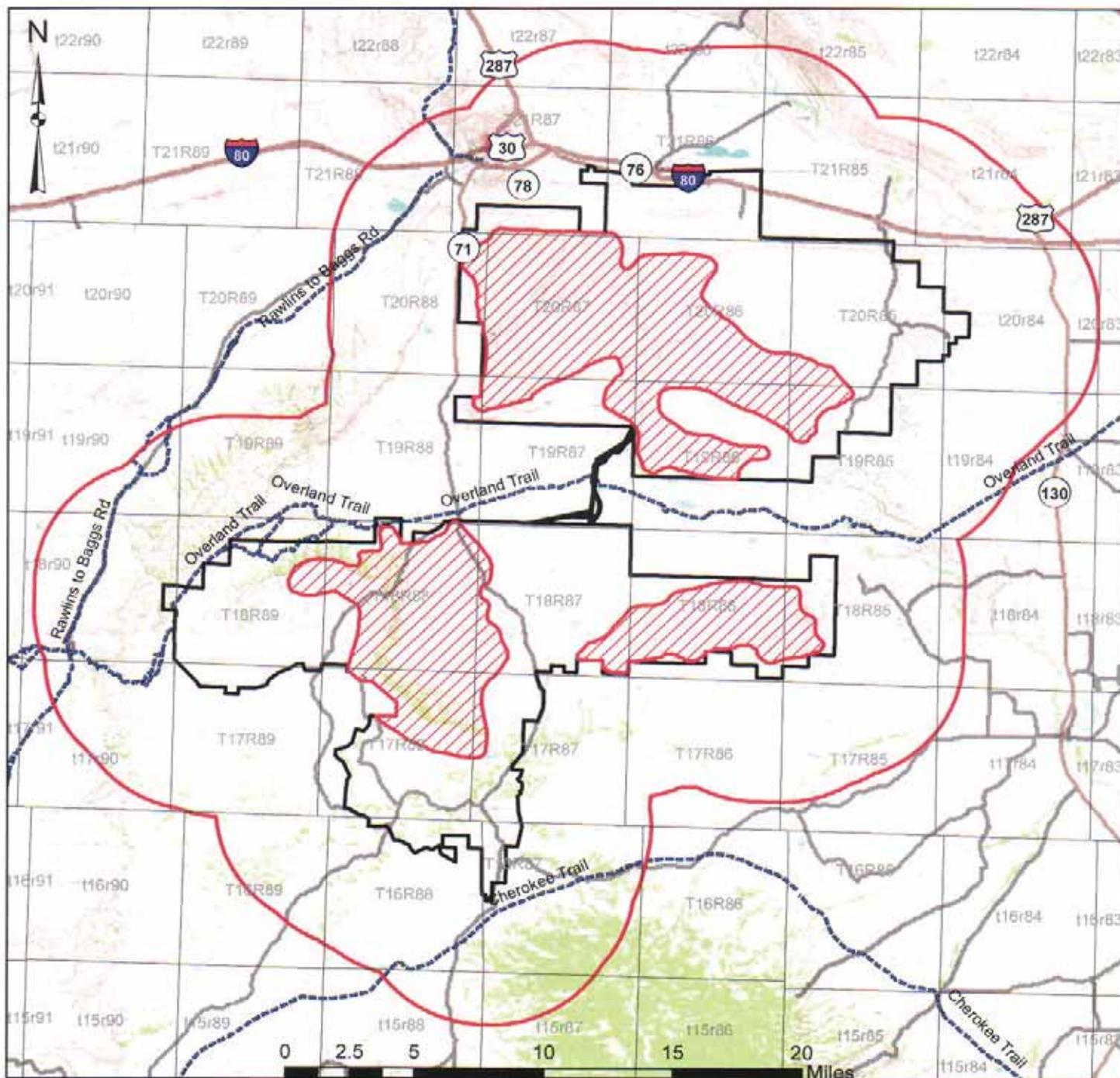
Floyd Azure, Chairman Date

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

S. Jane Caton # 91271 8-17-12
S. Jane Caton, Senior Assistant Attorney General Date

PROGRAMMATIC AGREEMENT AMONG THE BUREAU OF LAND MANAGEMENT,
 WYOMING STATE HISTORIC PRESERVATION OFFICER, THE ADVISORY COUNCIL ON HISTORIC
 PRESERVATION, AND POWER COMPANY OF WYOMING, LLC
 REGARDING ADVERSE EFFECTS TO HISTORIC PROPERTIES RESULTING FROM THE
 CHOKECHERRY AND SIERRA MADRE WIND ENERGY PROJECT IN CARBON COUNTY, WYOMING

APPENDIX A - AREA OF POTENTIAL EFFECTS



Map of the Area of Potential Effects for the Chokecherry and Sierra Madre Wind Energy Project.

- APE Boundary
- Disturbance Area (Alt. 1R)
- Historic Trails
- Application Area

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of this data for individual use or against use with other data.

PROGRAMMATIC AGREEMENT AMONG THE BUREAU OF LAND MANAGEMENT,
 WYOMING STATE HISTORIC PRESERVATION OFFICER, THE ADVISORY COUNCIL ON HISTORIC
 PRESERVATION, AND POWER COMPANY OF WYOMING, LLC
 REGARDING ADVERSE EFFECTS TO HISTORIC PROPERTIES RESULTING FROM THE
 CHOKECHERRY AND SIERRA MADRE WIND ENERGY PROJECT IN CARBON COUNTY, WYOMING

APPENDIX B

Best Management Practices and Applicant Committed Measures

Resource Area	Protection Measure	FEIS Authority/Source
Cultural – Historic Trails	<p>Within either 0.25-mile or the visual horizon (whichever is closer) of a cultural property/ historic trails.</p> <p>No surface disturbing activities. Management actions resulting in visual elements that diminish the integrity of the property's setting will be managed in accordance with the Wyoming State Protocol and BMPs.</p>	Appendix Table C-1 – Summary of BLM Environmental Constraints
Cultural Resources	Class III inventories of all proposed disturbance areas associated with the site-specific POD will be conducted prior to construction.	Appendix Table C-2. Summary of Applicant Committed Measures
Cultural Resources	All cultural resource identification, evaluation, and treatment, including as a result of unexpected discovery at such time that construction has been permitted, will follow the stipulations of the Programmatic Agreement (PA) established for the project.	Appendix Table C-2. Summary of Applicant Committed Measures
Cultural – Historic Trails	1 mile setback from the center of the Overland Trail as presently mapped (2008 RMP/ROD) in all areas except the following sections, where the BLM's RMP requirement of 0.25 miles were used: T18N R87W S6; T18N R88W S1; T18N R88W S2; T18N R88W S4; T18N R88W S7; T18N R88W S9; T18N R89W S11; T18N R89W S12; T18N R89W S13; T18N R89W S14; and the unmapped Overland Trail alternative route located in T18N R88W S6, T18N R89W S1, T18N R89W S2, T18N R89W S11, and T18N R89W S10.	Appendix Table C-2. Summary of Applicant Committed Measures
Water – North Platte River	WTG placement will be prohibited within one mile of the ordinary high water mark of the North Platte River.	Appendix Table C-2. Summary of Applicant Committed Measures
Cultural and Paleontological Resources	Unexpected discovery of cultural or paleontological resources during construction will be brought to the attention of the responsible BLM authorized officer immediately. Work will be halted in the vicinity of the find to avoid further disturbance to the resources while they are being evaluated and appropriate mitigation measures are being developed.	Appendix Table C-3. Applicant Committed Best Management Practices

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Resource Area	Protection Measure	FEIS Authority/Source
Visual Resources	Operators will reduce visual impacts during construction by clearly delineating construction boundaries and minimizing areas of surface disturbance; preserving vegetation to the greatest extent possible; utilizing undulating surface disturbance edges; stripping, salvaging and replacing topsoil; contoured grading; controlling erosion; using dust suppression techniques as required; and restoring exposed soils as closely as possible to their original contour and vegetation.	Appendix Table C-3. Applicant Committed Best Management Practices
Visual Resources	Operators will monitor and maintain visual mitigation measures for the approved project in accordance with a visual monitoring and compliance plan. The operator will maintain revegetated surfaces until a self-sustaining stand of vegetation is reestablished and visually adapted to the undisturbed surrounding vegetation.	Appendix Table C-3. Applicant Committed Best Management Practices
Cultural	CR-1: To minimize unauthorized collecting of archaeological material or vandalism to known archaeological sites, PCW and its contractors, and all construction personnel, shall attend mandatory training and be educated on the significance of cultural resources and the relevant federal regulations intended to protect them.	Appendix Table C-4 Proposed Mitigation Measures
Cultural Resources	<ul style="list-style-type: none"> • Preserving vegetation to the greatest extent possible; • Utilizing undulating surface disturbance edges; • Contoured grading; • Controlling erosion; • Restoring exposed soils as closely as possible to their original contour and vegetation; • Operators will monitor and maintain visual mitigation measures for the approved project in accordance with a visual monitoring and compliance plan; • The operator will maintain revegetated surfaces until a self-sustaining stand of vegetation is re-established and visually adapted to the undisturbed surrounding vegetation; and • No surface disturbing activities will occur within either 0.25 mile or the visual horizon (whichever is closer) of a cultural property/historic trail where setting is an aspect of integrity. 	Appendix E – Cultural Resources Protection Procedures