

## **APPENDIX B**

### **CONSULTATION PROTOCOL FOR THE TOPOCK REMEDIATION PROJECT**

#### **I. PURPOSE**

The purpose of this Protocol is to define how the Signatories and Invited Signatories to this Programmatic Agreement (PA) will engage in consultation. The Federal Agencies are the U.S. Department of the Interior (DOI), the U.S. Bureau of Reclamation (USBR), the U.S. Bureau of Land Management (BLM), the Advisory Council on Historic Preservation (ACHP), and the U.S. Fish and Wildlife Service (USFWS). State Agencies include the California State Historic Preservation Officer (CA SHPO), the Arizona State Historic Preservation Officer (AZ SHPO), and the California Department of Toxic Substances Control (DTSC). These agencies will consult with the Pacific Gas and Electric Company and the Chemehuevi Indian Tribe, Cocopah Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Fort Yuma Quechan Tribe, Hualapai Tribe, Havasupai Tribe, Twenty-Nine Palms Band of Mission Indians, and the Yavapai-Prescott Indian Tribe (hereinafter the Tribes) in carrying out the Topock Remediation Project. This Consultation Protocol describes the manner in which the BLM and other Federal and State Agencies will consult with Signatories, Tribes, and Invited Signatories during the execution of the PA for the Undertaking. (See definition of Undertaking in Glossary.)

#### **II. GENERAL GOVERNMENT-TO-GOVERNMENT AND SECTION 106 CONSULTATION RESPONSIBILITIES**

Federally recognized Tribes are sovereign nations entitled to a government-to-government relationship with the U.S. Government. The Tribes have a unique legal relationship with the United States Government as set forth in the Constitution of the United States, treaties, statues, and court decisions. This consultation protocol is one expression of that relationship and serves to structure how that relationship will be maintained, respected, and implemented in the course of Federal Agency planning, decision making, and other activities. The BLM Lake Havasu Field Office (LHFO) is the Designated Federal Official responsible for implementation of this protocol and related policies and requirements. Federal Agencies have a trust responsibility to the Tribes, which obligates the Agencies to protect the Trust interests of the Tribe to the maximum extent feasible for resources held in trust by the U.S. Government for the Tribes.

The BLM, mindful of its government-to-government responsibilities, as lead Federal Agency for Section 106 review and implementation of this Undertaking, shall continue to consult with all Tribes who have participated in the Undertaking's consultation process whether or not the Tribes sign this PA.

Consultation refers to meaningful and timely discussion in an understandable language with Tribal governments and their designated representatives. Tribal consultation is a process, not

a single meeting, a notification, or an exchange of correspondence. Consultation may require multiple formal and/or informal meetings and other forms of interaction. Consultation involves seeking, discussing, and considering the views of the various parties involved, seeking ways to resolve disagreements or conflicts, and seeking agreement on how to proceed with a given activity, project, program, or decision. The intent is to ensure that the interests and concerns about the area referred to as Topock, the Topock Maze, and the Topock TCP associated with the Area of Potential Effect (APE) are identified and addressed during Agency planning, decision making, and other activities.

The Agencies recognize the right of self-determination for Indian Tribal governments. The DOI and the BLM are committed to working with Indian Tribal governments in this unique relationship, respecting Tribal sovereignty and self-determination. Tribal consultation will use the process described below, or will use the provisions of the BLM 8120 Series Manual guidance (Tribal Consultation), unless the BLM and a Tribe mutually agree to another procedure or method. Staff-level Tribal consultation will take place primarily on a face-to-face level between BLM staff and Tribal staff. Government-to-government consultation is considered to take place between Tribal Chairs and the BLM Field Office Manager and/or DOI management officials and may not necessarily be face-to-face.

### **III. CONSULTATION PROCESS**

- A. Points of Contact (POCs) shall be established for all Consulting Parties; all parties to this PA agree that all communications between all Consulting Parties shall be channeled through the POCs; and the BLM shall provide all Consulting Parties an up-to-date list of all POCs, with a frequency of at least every other month after the initial POC list is established. Provision of information to the POC(s) provided for a Consulting Party will constitute sufficient distribution of information for purposes of consultation under this agreement.
- B. The BLM shall establish an email list and U.S. mail distribution list for all POCs for the purposes of information exchange, including the transmission of information from various meetings, unanticipated discoveries, and other information related to consultation for Section 106.
- C. This consultation protocol applies to all of the following associated with the Undertaking and occurring after the date this PA is executed:
  - 1. Work-plans and Action Memoranda for ground-disturbing activities, including rehabilitation.
  - 2. Milestone project documents to be prepared under CERCLA that are identified by DOI to require consultation.
  - 3. Various cultural resource management plans and documents including, but not limited to, the APE, APE revision, the Cultural Resources Management Plan (CRMP), the Cultural and Historic Properties Management Plan (CHPMP), the

Treatment Plan, National Register of Historic Places properties identification, discoveries, monitoring, confidentiality, curation, professional and tribal qualifications, and any other consultations associated with Section 106 compliance.

D. Consultation regarding potential effects on cultural and historic properties shall proceed as follows:

1. The following actions shall be determined to have “no effect” or “no adverse effect” when undertaken in connection with the Undertaking and may proceed without further consultation:
  - a. Pre-construction surveys;
  - b. Marking (including fencing) of identified Cultural and Historic Properties, provided that such activities do not require mechanical disturbance or vegetation removal;
  - c. Monitoring;
  - d. Sampling of existing wells;
  - e. Operation and maintenance of existing and future approved facilities required for the Topock Remediation Project, including transportation associated with such operation and maintenance provided that such activities do not introduce additional visual or audio elements to a previously approved facility;
  - f. Avoidance of Cultural and/or Historic Properties in areas already surveyed; and
  - g. Actions taken in areas of the APE, as delineated by the Appendix A map, which have previously been used or disturbed in connection with Time Critical Removal Actions or other actions related to the Topock Remediation Project, including but not limited to staging areas, roads or pipelines, or for other activities including but not limited to soil or groundwater sampling.
2. If the BLM, in consultation with the AZ SHPO, CA SHPO, and Tribes finds that a cultural and/or historic property (or properties) will not be adversely affected by a proposed action, then no further consultations will take place and all Signatories, Tribes, and Invited Signatories will be notified of the determination.

E. If the BLM determines that there is an adverse effect to cultural and/or historic properties, BLM shall provide materials describing the proposed actions that have potential to adversely affect cultural and/or historic properties to all Signatories, Tribes, and Invited Signatories within ten (10) days of the determination of adverse effect by the BLM. All Signatories, Tribes, and Invited Signatories will have thirty (30) days to provide comments to BLM concerning the effects of proposed actions on cultural and/or historic properties. If no comments are received from a particular consulted individual or

group within thirty (30) days of notification by the BLM, the BLM will assume that party has no comments and may proceed.

- F. The BLM has fifteen (15) days from the close of the thirty (30)-day comment period described in E. above to take all comments into account and reach a decision on how to best avoid, mitigate, or minimize any adverse effects. The BLM will notify all Signatories, Tribes, and Invited Signatories of any such decision within the fifteen (15)-day period, and may proceed to implement the decision after notifying the other Consulting Parties.
- G. BLM shall meet with Signatories, Tribes, and Invited Signatories on a bi-annual basis, at a time and place agreeable to the majority of participants. Signatories, Tribes, or Invited Signatories may request the BLM to hold additional or supplemental meetings if the need arises. The hosting of such meetings will be determined on a meeting-by-meeting basis. The BLM will inform all POCs of the proposed meeting date(s) and location(s) no less than thirty (30) days prior to the proposed meeting to allow for adequate time in scheduling. Such meetings will provide an opportunity for all Signatories, Tribes, and Invited Signatories to express any concerns related to the Undertaking and its effect on historic properties. The annual meeting should be considered an opportunity to discuss content for each annual report.
- H. Consultation meetings may contribute toward discussion and explanation regarding implementation of this protocol and/or any problems or opportunities that have arisen with regard to planning, decision making, and/or other aspects of the Undertaking.
- I. The BLM retains all responsibility for conducting government-to-government consultation with Tribes, including consultation not directly related to Section 106.
- J. In addition to the bi-annual consultation provided for above, agency executives will consult with Tribal Chairs when requested.
- K. Within thirty (30) days after the election of a new Tribal Chair or the designation of a new BLM Field Office Manager, the relevant Tribal Chair(s) and the Field Office Manager will endeavor to meet to review this agreement and ensure continuity in its implementation. To the extent feasible, the outgoing Tribal Chair and/or Field Office Manager will take part in such meetings.
- L. Staff level consultations between the BLM and Tribes may occur as needed and determined necessary by staff. Staff may include the BLM LHFO archaeologist, Tribal Liaison, BLM AZ State Office cultural resources management staff, and other natural and cultural resource managers. Tribal staff may include Tribal cultural resources management staff, Tribal Historic Preservation Officers, traditional religious leaders, elders, Tribal chairmen/chairwomen and other council members, and other Tribal staff who may be concerned, such as law enforcement officials or wildlife specialists.

1. The professional staff of the Tribes will represent the Tribes in consultation with BLM about actions reviewed under this agreement, unless a Tribal Chair otherwise specifies or delegates review authority to other or additional individuals.
2. Unless modified by written agreement between a Tribal Chair and the BLM, consultation between Tribal staff and BLM staff will be in accord with the following procedures:
  - a. Informal, routine interaction and ongoing communication are encouraged, provided the topics of all meetings and discussions are clearly defined in advance to the extent practicable, and that such discussions are understood to be informal and not to constitute official findings or determinations.
  - b. Tribal officials and the BLM senior staff may be involved as needed.
  - c. In advance of meetings or other consultative activities, the BLM will provide the Tribes with documents, maps, photographs, and other information pertinent to the subject of consultation, to the extent practicable. Whenever possible, these materials will be provided at the initiation of consultation. Tribes will have thirty (30) days from the initiation of consultation to respond to the BLM. If the BLM does not receive a response from an individual Tribe within that period, the BLM will assume the Tribe has no comment, document this result to the administrative record, and proceed. The BLM will be responsible for documenting the administrative record regarding the dates of transmission to each Tribe of individual notices of initiation of consultation.
  - d. Signatories, Tribes, and Invited Signatories, may involve other parties in consultation, including as applicable other Tribes, applicable State Historic Preservation Officers, other federal and state agencies, local governments, and other interested parties.
  - e. Tribes, due to their sovereign status, have special consultative rights that BLM will respect in the conduct of consultation, which may include consultation on technical, policy, and other issues of a proposal.
  - f. To the extent feasible, Signatories, Tribes, and Invited Signatories will follow the guidelines of this Protocol in the event of emergency situations and situations, such as where discoveries require immediate action. It is understood, however, that such situations may require that consultation be expedited and, in extreme cases, may restrict BLM's ability to consult.