

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
LAKE HAVASU FIELD OFFICE

In Reply Refer To:
CAAZCA 43660
2640 (AZ-070)

September 17, 2004

ACTION MEMORANDUM

TO: State Director

FROM: Acting Field Manager, Lake Havasu Field Office

THROUGH: Acting District Manager, Colorado River District

SUBJECT: Time Critical Removal Action No. 3,
Pacific Gas and Electric Topock Compressor Facility

I. PURPOSE

This Action Memorandum documents the basis for authorizing a time critical removal action to address the release of hazardous substances from the Pacific Gas and Electric ("PG&E") Compressor Station near Topock, Arizona (hereafter "PG&E facility"). Hazardous substances released from the PG&E facility have migrated onto or under land managed by the Bureau of Land Management ("BLM") on behalf of the Bureau of Reclamation ("BOR"). Specifically, hazardous substances including, without limitation, hexavalent chromium released from the PG&E facility have been detected in groundwater under BLM-managed land. This plume of contaminated groundwater has been detected in groundwater within 100 feet of the Colorado River and is or may be migrating toward the Colorado River.

This proposed time critical removal action is authorized pursuant to the response action authority of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9604. Pursuant to Executive Order 12580, as amended, and Department of the Interior ("DOI") Departmental Manual, Section 104 response action authority has been delegated to BLM to address the release or threatened release of hazardous substances on or from land under BLM's jurisdiction, custody, or control.

The purpose of this proposed time critical removal action is to undertake additional measures, as specified herein, to maintain hydraulic control of the groundwater plume to prevent or abate the release of hexavalent chromium into the Colorado River.

II. SITE CONDITIONS AND BACKGROUND

A. Site Description

The PG&E facility comprises approximately 265 acres located 15 miles southeast of Needles, California, south of Interstate 40, in the north end of the Chemehuevi Mountains. The facility is on private land owned by PG&E and is situated within the Havasu National Wildlife Refuge. The facility is located within one-half a mile of BLM-managed land and is less than one mile from the Colorado River.

PG&E has been the owner and operator of the PG&E facility since 1951 and has owned the property on which the facility is located since 1965. Beginning in 1951 and continuing to approximately 1989, PG&E conducted onsite disposal of significant quantities of wastewater containing hexavalent chromium from the cooling towers of the compressor station at the facility. According to PG&E's estimates, from 1951 to 1969, PG&E disposed annually at least six million gallons of untreated chromium-contaminated wastewater into Bat Cave Wash, an ephemeral stream that flows north from the facility across Havasu National Wildlife Refuge and BLM-managed land emptying into the Colorado River. From 1970 to 1989, PG&E disposed its wastewater into evaporation ponds on Havasu National Wildlife Refuge property adjacent to BLM-managed property.

B. Other Actions to Date

In 1988, PG&E completed a soil investigation in the Bat Cave Wash area at the request of the California Department of Health Services (now known as the Department of Toxic Substances Control ("DTSC")) and the U.S. Environmental Protection Agency ("EPA"). The soil investigation documented chromium releases to the environment. In 1989, a "Comprehensive Ground Water Monitoring Evaluation" prepared by the California Regional Water Quality Control Board identified chromium releases in groundwater.

By letter dated May 29, 1995, PG&E reported the presence of chromium in groundwater samples taken on the east side of Bat Cave Wash near the north boundary of the PG&E facility. In response, on February 26, 1996, DTSC and PG&E executed a Corrective Action Consent Agreement pursuant to State law under which DTSC directed PG&E to perform a "Facility Investigation" as well as any "Interim Measures" determined to be necessary to address immediate or potential threats to human health and/or the environment.

In the course of implementing groundwater monitoring required under the Corrective Action Consent Agreement, PG&E has documented an extensive plume of groundwater contaminated with hexavalent chromium that stretches from the PG&E facility under National Wildlife Refuge and BLM-managed property toward the Colorado River. On February 3, 2004, PG&E reported concentrations of hexavalent chromium of 111 parts per billion ("ppb") in groundwater taken

from monitoring well MW34-80. This monitoring well is located on BLM-managed property within 100 feet from the Colorado River.

Based on this finding, DTSC ordered PG&E to prepare and submit Interim Measures ("IM") Work Plan No. 2 "to immediately begin pumping, transport and disposal of groundwater from existing monitoring wells at the MW20 cluster." These monitoring wells located on or near the "MW20 bench" are on BLM-managed property. By Action Memorandum issued March 3, 2004, BLM authorized PG&E to conduct a time critical removal action, consistent with IM No. 2, to prevent or abate the release of hexavalent chromium into the Colorado River. The scope of this removal action was to extract contaminated groundwater from existing or, if necessary, new wells to reverse the groundwater gradient away from the Colorado River and maintain hydraulic control of the chromium-contaminated plume.

On May 20, 2004, BLM issued a second Action Memorandum authorizing PG&E to operate, for a limited period of time, a batch treatment system on the MW20 bench. The purpose of this time critical removal action was to reduce the volume of hazardous waste being shipped offsite by allowing treatment of contaminated groundwater onsite prior to offsite transport and disposal as non-hazardous waste.

III. THREATS TO PUBLIC HEALTH, OR WELFARE, OR THE ENVIRONMENT

As documented by recent groundwater sampling results, hexavalent chromium has been detected in significant concentrations in wells within 100 feet of the Colorado River. The proximity of the groundwater plume to the Colorado River constitutes an actual or potential threat to the environment.

To date, the rate of extraction of groundwater has succeeded in maintaining hydraulic control of the chromium plume. However, due to the influence of water levels in the Colorado River on groundwater gradient, increasing groundwater extraction rates is expected to be necessary to maintain hydraulic control of the chromium-contaminated plume. Specifically, during the period of lowest river levels from October 2004, through January 2005, extraction rates between 120-150 gallons per minute may be required to maintain such hydraulic control. Existing storage and treatment capacity on the MW20 bench is insufficient to satisfy these increased extraction rates.

Expansion of the existing facilities on the MW20 bench as the sole means of managing the maximum projected groundwater volume poses several concerns for public health and safety, and ease of implementation. Our review of the Potential Expansion of Facilities on the Monitoring Well 20 (MW20) Bench, submitted on September 17, 2004 shows that transporting the maximum projected volume of groundwater from the MW20 bench would require more than 40 trucks per day, increasing risks of transportation accidents and hazardous waste spills, adverse impacts on local roads and residents, and potential impacts on cultural and biological resources. Additional offsite treatment and disposal facilities that could accommodate the additional volume of hazardous waste on a 24 hours a day, seven days a week basis would be required. Such disposal facilities would be several hundred miles from the Topock site. For these reasons and others, expanding the MW20 bench facilities as the sole means of managing the volume of

extracted groundwater necessary to maintain hydraulic control of the chromium-contaminated plume is undesirable.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances through groundwater may continue to migrate toward the Colorado River and may reach the River if not addressed by implementing the time critical removal action described in this Action Memorandum. This time critical removal action is necessary to prevent or abate the release or substantial threat of release of hazardous substances into the Colorado River. Due to the proximity of the groundwater plume to the River, BLM determines, in accordance with Section 300.415(b)(2) of the National Oil and Hazardous Substances Contingency Plan ("National Contingency Plan" or "NCP"), 42 U.S.C. §300.415(b)(2), that a time critical response is necessary.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

As described specifically in the attached *Interim Measures No. 3 Work Plan, Revision 1* ("Work Plan"), which is incorporated herein, the proposed time critical removal action includes the following actions: (1) installation and utilization of piping from the MW20 bench to a proposed private treatment facility on Parcel 650-151-06; (2) installation and utilization of piping for conveyance of treated water from the proposed private treatment facility to proposed injection wells on Parcel 650-151-06; (3) any necessary improvements to existing access roads to install piping or remove waste materials from the proposed private treatment facility; (4) potential installation of monitoring wells to evaluate the effects on groundwater flow and chemistry due to injection of treated waste water; and (5) expansion of facilities on, and transportation from, the MW20 bench to accommodate, for a limited time period, the potential need to transport treated water and brine until more permanent disposal measures are in place. These activities, as identified in the attached Work Plan, are authorized by this Action Memorandum: provided, however, that prior to implementation all such activities are subject to BLM review and approval. Specifically, all such measures must comply with appropriate mitigation measures as identified by BLM in consultation with affected parties, to address impacts on cultural and biological resources and satisfy all applicable Federal requirements.

In particular, implementation of the activities identified in the Work Plan must comply with all mitigation measures identified in the *Cultural Resources Management Plan for the Topock Compressor Station Expanded Groundwater Extraction and Treatment System, San Bernardino County, California (September 2004)*, as specified by the Memorandum of Agreement executed on September 14, 2004, by BLM, and the California State Historic Preservation Officer regarding Interim Measures No. 3. Furthermore, implementation of the activities identified in the Work Plan must comply with all mitigation measures identified, and to be identified by BLM in the attached Lake Havasu Field Office Wildlife and Threatened or Endangered Species Stipulations, and in consultation with State agencies and the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. §1536.

Because such actions will be financed by PG&E, BLM has not determined the estimated costs to implement this time critical removal action.

VI. EXPECTED CHANGE IN SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

In the event this time critical response action is delayed or not taken, hazardous substances may be released, or there is a substantial threat of such release, into the Colorado River.

VII. OUTSTANDING POLICY ISSUES

BLM is coordinating this time critical removal action with work required of PG&E pursuant to the Corrective Action Consent Agreement issued by DTSC. This coordination of BLM CERCLA authorities and State RCRA authorities is intended to facilitate and streamline PG&E's performance of work necessary to protect the Colorado River. BLM must ensure, however, that such work is performed in a manner consistent with CERCLA, the NCP, and other applicable Federal requirements. In the event that Federal requirements are not satisfied through this coordination effort, BLM may be required to initiate, or require PG&E to perform, activities independent of State law.

VIII. ENFORCEMENT

BLM and DOI have determined that PG&E is a responsible party pursuant to Section 107 of CERCLA, 42 U.S.C. §9607. As defined by CERCLA, PG&E is the owner and operator of the PG&E facility from which hexavalent chromium has been released into the environment. Hexavalent chromium is a hazardous substance under CERCLA.

By letter dated February 12, 2004, DOI has notified PG&E of its potential liability under CERCLA and has requested that PG&E enter into an administrative order on consent ("AOC") by which PG&E would perform future response action and agree to reimburse DOI, BLM, and other DOI bureaus for response costs incurred in overseeing PG&E's performance of response action on Federal property. In the event that DOI is unable to reach an agreement with PG&E over the terms of this AOC, DOI may decide to take response action unilaterally, may initiate enforcement action or take any other measures necessary to direct or require PG&E to perform response action, and seek to recover all response costs incurred from PG&E.

IX. ADDITIONAL MITIGATION MEASURES

Further review of the proposal revealed that the Mitigation Measures in Section 7.0 of Interim Measures No. 3 Work Plan, Revision 1 need further revision. The attachment entitled Mitigation Measures, Lake Havasu Field Office replaces Section 7.0 of the Interim Measures No. 3 Workplan, Revision 1, in its entirety.

X. RECOMMENDATION

This decision document identifies the current proposed time critical removal action to prevent or abate releases of hexavalent chromium from the PG&E facility from migrating to the Colorado River. BLM has determined that PG&E is capable of performing this removal action in a manner consistent with the NCP, contingent on PG&E's full compliance with the requirements of this Action Memorandum including the attached Work Plan. Conditions at the site meet the criteria for undertaking the proposed time critical removal action, as specified by Section 300.415 (b)(2) of the NCP, 40 CFR §300.415(b)(2). We recommend your approval of the proposed time critical removal action.

Patricia A. Taylor
Acting Field Manager

9-17-04
Date

I Concur:

Wayne King
Acting District Manager

9/17/2004
Date

Clara J. Zielinski
Approval
State Director

9/17/04
Date

Disapproval
State Director

Date

Attachments:

- Interim Measures No. 3 Work Plan, Revision 1
- Memorandum of Agreement between BLM, Lake Havasu Field Office and California State Historic Preservation Officer
- Mitigation Measures, Lake Havasu Field Office
- Potential Expansion of Facilities on the Monitoring Well 20 (MW20) Bench

MITIGATION MEASURES

LAKE HAVASU FIELD OFFICE

1. All project activities shall be conducted in a manner that avoids take of a Federally listed species. Take is defined to include any harm or harassment, including significant habitat modification or degradation that could potentially kill or injure listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Should a listed species enter the project site or become harmed or killed by project activities, the project shall be shut down and the USFWS, BLM and CDFG shall be consulted. Impacts to habitat shall also be minimized to the maximum possible extent.
2. PG&E shall designate a field contact representative (FCR) who shall be responsible for overseeing compliance with the mitigation measures. The FCR must be onsite during all construction activities. The FCR shall have authority to halt all activities that are in violation of the mitigation measures and/or pose a danger to listed species. The FCR shall have a copy of all mitigation measures when work is being conducted on the site. The FCR may be a project manager, PG&E representative, or a biologist.
3. PG&E shall have a qualified biologist responsible for assisting crews in compliance with the mitigation measures, performing surveys in front of the crew as needed to locate and avoid listed species, and monitoring compliance. Preconstruction surveys by a biologist shall be implemented for special-status wildlife species in impact areas immediately prior to initiation of ground-disturbing activities. The inspection shall provide 100 percent coverage of the area within the project limits. All desert tortoise burrows and pallets outside of, but near, the project footprint shall be flagged at that time so that they may be avoided during work activities. At the conclusion of work activities, all flagging shall be removed.
4. Listed species including the desert tortoise shall not be handled or harassed. Encounters with a listed species shall be reported to the project biologist and BLM Lake Havasu (BLM) biologists. These biologists will maintain records of all listed species encountered during project activities. This information will include for each individual: the locations (narrative, vegetation type, and maps) and dates of observations; general conditions and health; any apparent injuries and state of healing; and diagnostic markings.
5. All PG&E employees and contractors involved with the proposed project shall be required to attend PG&E's threatened and endangered species education program prior to initiation of activities. New employees shall receive formal, approved training prior to working on-site.
6. To the maximum extent possible, facilities (treatment facility, pipelines, injection wells, and access routes) shall be sited within an existing right-of-way (ROW) and previously-disturbed or barren areas to limit new surface disturbance.
7. Existing routes of travel to and from the proposed project site shall be used. Cross-country use of vehicles and equipment shall be prohibited.
8. Trash and food items shall be contained in closed containers and removed daily to reduce attractiveness to opportunistic predators such as common ravens (*Corvus corax*), coyotes (*Canis latrans*), and feral dogs.

9. To minimize effects, lights shall be angled toward the ground, reduced in intensity to levels compatible with safety concerns, and limited in duration of usage. The hue of lighting shall be that which is most compatible with and least disturbing to wildlife.
10. Employees shall not bring pets to the project site.
11. Firearms shall be prohibited from the project site, except as required for security employees.
12. Employees shall be required to check under their equipment or vehicle before it is moved. If a desert tortoise is encountered, the vehicle is not to be moved until the animal has voluntarily moved to a safe distance away from the parked vehicle.
13. Upon project completion, all unused material and equipment shall be removed from the site. This condition does not apply to fenced sites.
14. Palo verde, ocotillo, mesquite, cat-claw, smoke tree, and cacti species are considered sensitive by the BLM. To the extent practicable, these species shall be avoided. If avoidance is not possible, these species shall be transplanted when practical. Should any of the aforementioned plants be destroyed, they shall be replaced.
15. The area of disturbance shall be confined to the smallest practical area, considering topography, placement of facilities, location of burrows, nesting sites or dens, public health and safety, and other limiting factors. As needed, work area boundaries shall be delineated with flagging or other marking to minimize surface disturbance associated with vehicle straying.
16. All activities shall be restricted to a pre-determined corridor. If unforeseen circumstances require project expansion, the potential expanded work areas shall be surveyed for listed species prior to use of the area. All appropriate mitigation measures shall be implemented within the expanded work areas based on the judgment of the agencies and the project biologist. Work outside of the original ROW shall proceed only after receiving written approval from the BLM, Fish and Wildlife Service (Service) and CDFG describing the exact location of the expansion.
17. PG&E has the option of erecting desert tortoise fencing in lieu of inspection of open trenches. If the trench is short, personnel may monitor the trench. All open holes and trenches shall be inspected for trapped desert tortoises at the beginning, middle, and end of the work day, at a minimum. During excavation of trenches or holes, earthen ramps shall be provided to facilitate the escape of any wildlife species that may inadvertently become entrapped. If desert tortoises are trapped, the project biologist shall be notified immediately. The desert tortoise shall be allowed to escape before work continues in that location. A final inspection of the open trench segment shall also be made immediately before back filling. All open pipe segments shall be covered when work activity is not occurring at the site.
18. All construction vehicles and equipment shall be periodically checked to ensure proper working condition and to ensure that there is no potential for fugitive emissions of oil, hydraulic fluid or other hazardous products. The BLM shall be informed of any hazardous spills.

19. Workers shall exercise caution when traveling to and from the project area. To minimize the likelihood for vehicle strikes of listed species, speed limits when commuting to project areas on ROW roads shall not exceed 20 miles per hour.
20. Intentional killing or collection of either plant or wildlife at construction sites and surrounding areas shall be prohibited. The BLM shall be notified of any such occurrences.
21. For emergency situations involving a pipeline leak or spill or any other immediate safety hazard, PG&E shall notify the BLM within 48 hours. As a part of this emergency response, the BLM may require specific measures to protect listed species. During cleanup and repair, the agencies may also require measures to recover damaged habitats.
22. Once the treatment facility is no longer needed, PG&E shall restore disturbed areas in a manner that will assist in the re-establishment of biological values within the disturbed ROW. Methods of such restoration shall include the reduction of erosion, re-spreading of the top two inches of soil, planting with appropriate native shrubs, and scattering of bladed vegetation and rocks across the ROW, depending upon the appropriateness or effectiveness in a given area.
23. Within 60 days of completion of construction activities, the FCR and biologist shall prepare a brief report for the BLM documenting the effectiveness and practicality of the mitigation measures and making recommendations for modifying the measures to enhance species protection. The report will also provide information on survey and monitoring activities, observed listed species, and the actual acreage disturbed by the project.
24. Any future construction during the nesting season for migratory birds, generally February to August for most birds, will require preconstruction surveys for nesting pairs, nests, and eggs. These preconstruction surveys shall occur in areas proposed for any vegetation removal and active nesting areas flagged. If nesting birds are detected, vegetation removal will be avoided during the nesting season. All construction activity within 200 feet of active nesting areas will be prohibited until the nesting pair/young have vacated the nests.
25. All areas within the proposed action area, subject to operations and maintenance activities, and within the potential impact of the action shall be monitored semiannually during the active period for tortoise by a biologist knowledgeable of desert tortoise ecology. Surveys shall be completed throughout the duration of the action to verify the presence or absence of desert tortoise and reports shall be provided to the biologists in the BLM Lake Havasu Field Office on an annual basis.
26. Riparian areas surrounding the proposed action site and subject to influence of operations and maintenance activities shall be surveyed for southwestern willow flycatchers according to the protocol established by the Service. These surveys shall be completed each year by a biologist permitted by the Service to carry out flycatcher surveys until the action has been completed and all facilities have been removed. Reports shall be provided to the biologists in the BLM Lake Havasu Field Office on an annual basis.
27. Upon locating an individual of a dead or injured listed species, PG&E shall make initial notification to the BLM and US Fish and Wildlife Service (Service) within three working days of its finding. The notification must be made in writing to the Service's Division of Law Enforcement in Torrance (370 Amapola Avenue, Suite 114, Torrance, California 90501;

(310) 328-1516) and by telephone and writing to the Ventura Fish and Wildlife Office (2493 Portola Road, Suite B, Ventura, California 93003; (805) 644-1766). The report will include the date and time of the finding or incident (if known), location of the carcass, a photograph, cause of death (if known), and other pertinent information. Animals injured through PG&E activities shall be transported to a qualified veterinarian for treatment at the expense of PG&E. If an injured animal recovers, the CDFG and the BLM shall be contacted for final disposition of the animal.

28. PG&E will immediately notify the BLM Lake Havasu Field Manager (or his designated representative) of any cultural resources (prehistoric/historic sites or objects) and/or paleontological resources (fossils) encountered during permitted operations and will maintain the integrity of such resources pending subsequent investigation. All operations in the immediate area of the discovery must be suspended until written authorization from BLM to proceed is issued. An evaluation of the discovery shall be made by a qualified archaeologist or paleontologist to determine appropriate actions to prevent the loss of significant cultural or scientifically-important paleontological values.
29. No permanent improvements that affect the integrity of the bridge/culvert over Bat Cave Wash on historic Route 66 will be implemented.
30. Actions that result in impacts to archaeological or historical resources are subject to the provisions of the Archaeological Resources Protection Act of 1979, as amended, and the Federal Land Policy and Management Act of 1976.

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**MEMORANDUM OF AGREEMENT
BETWEEN
THE BUREAU OF LAND MANAGEMENT, LAKE HAVASU FIELD OFFICE
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE PACIFIC GAS & ELECTRIC TOPOCK INTERIM MEASURES NO. 3,
EXPANDED GROUNDWATER EXTRACTION AND TREATMENT PROJECT
SAN BERNARDINO COUNTY, CALIFORNIA**

WHEREAS, Pacific Gas & Electric Company (PG&E) proposes to construct; operate and maintain in the area depicted as the "Area of Potential Effects" (APE) in Figure 1 of Attachment 1 to this Memorandum of Agreement (MOA), an expanded groundwater extraction and treatment system, called the Topock Interim Measures No. 3 Project (Project), in order to maintain hydrologic control of an area in which groundwater has been contaminated by Chromium VI to prevent Chromium-contaminated groundwater from impacting the Colorado River; and

WHEREAS, the U.S. Department of the Interior, Bureau of Land Management (BLM), Lake Havasu Field Office, proposes to issue an Action Memorandum under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (Undertaking) authorizing PG&E to conduct that portion of the Project located on public lands, and will act as lead federal agency for all lands within the current and within any expanded APE of the Undertaking and the Project, regardless of ownership, for purposes of complying with Section 106 of the National Historic Preservation Act, as amended (NHPA) (16 U.S.C. 470f), and its implementing regulations codified at 36 CFR part 800; and

WHEREAS the BLM, in consultation with the California State Historic Preservation Office (SHPO), has determined that construction, operation, maintenance, and subsequent dismantling of the Project will have an adverse effect upon CA-SBr-2910H, a property determined eligible for inclusion in the National Register of Historic Places (NR) and upon CA-SBr-219, a property listed in the NR (historic properties), and notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect finding in accordance with 36 CFR part 800, regulations effective January 11, 2001, implementing Section 106 of the NHPA; and

WHEREAS, PG&E will construct, operate, maintain, and ultimately dismantle the Project, implement the *Cultural Resources Management Plan for the Topock Compressor Station Expanded Groundwater Extraction and Treatment System, San Bernardino County, California* (Applied Earthworks, September 2004) (CRMP) that is Attachment 1 to this MOA, has participated in the consultation, and has been invited to concur in this MOA; and

1
 2 WHEREAS, the BLM has consulted the Quechan Tribe-Fort Yuma, Ft. Mohave Indian Tribe,
 3 Cocopah Indian Tribe, Chemehuevi Indian Tribe, Havasupai Tribe, Hualapai Tribe, Yavapai-
 4 Prescott Indian Tribe, Twenty-Nine Palms Band of Mission Indians and Colorado River Indian
 5 Tribes (Tribes) regarding the Project and the Undertaking and their effect on historic properties,
 6 and will continue to consult with the Tribes throughout the implementation of this MOA and the
 7 CRMP;

8
 9 NOW, THEREFORE, the BLM and the SHPO agree that the Project and the Undertaking shall
 10 be implemented in accordance with the following stipulations in order to take into account the
 11 effects of the Project and the Undertaking on historic properties, and further agree that these
 12 stipulations shall govern the Project and the Undertaking and all of their parts until this MOA
 13 expires or is terminated.

14
 15 **Stipulations**

16
 17 The BLM shall ensure that the following measures are carried out:

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 19
 20 **I. MANAGEMENT OF HISTORIC PROPERTIES AND CULTURAL RESOURCES**

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 22 A. The BLM shall ensure that known historic properties and other cultural resources, whether
 23 known or unknown that may be subsequently identified, within the current APE and within
 24 any expanded APE, are managed in accordance with the CRMP. Unsurveyed portions of the
 25 current APE and any expanded APE shall be surveyed and inventoried as prescribed in the
 26 CRMP.
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 28 B. Notwithstanding the current provisions of section 1.3, page 4, of the CRMP, the parties to
 29 this MOA agree that copies of survey and evaluation reports and of annual reports will
 30 routinely be submitted to the SHPO.
 31
 32 C. The parties to this MOA agree that the effects and any prospective effects of the Project and
 33 of the Undertaking on historic properties and cultural resources subject to this MOA shall be
 34 resolved by satisfactory implementation and completion of the measures prescribed in the
 35 CRMP or in any amendments thereto agreed upon pursuant to stipulation I.C.2., below.
 36

37 **II. ADMINISTRATIVE PROVISIONS**

- 38
 39 A. **Confidentiality.** The parties to this MOA acknowledge that historic properties and cultural
 40 resources covered by this MOA are subject to the provision of § 304 of the National Historic
 41 Preservation Act of 1966 and § 6254.10 of the California Government Code (Public Records
 42 Act), relating to the disclosure of archaeological site information and, having so
 43 acknowledged, will ensure that all actions and documentation prescribed by this MOA are
 44 consistent with § 304 of the NHPA and § 6254.10 of the California Government Code.

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2 **B. Resolving Objections.**

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4 1. Should any party to this MOA object to the manner in which the terms of this MOA are
5 implemented, to any action carried out or proposed with respect to implementation of the MOA
6 (other than the Project and the Undertaking itself) or to any documentation prepared in
7 accordance with and subject to the terms of this MOA, the BLM shall immediately notify the
8 other parties to this MOA of the objection and consult with the objecting party and the other
9 parties to this MOA for no more than fourteen (14) days to resolve the objection. The BLM shall
10 reasonably determine when this consultation will commence. If the objection is resolved through
11 such consultation, the action in dispute may proceed in accordance with the terms of that
12 resolution. If, after initiating such consultation, the BLM determines that the objection cannot be
13 resolved through consultation, the BLM shall forward all documentation relevant to the objection
14 to the ACHP, including the BLM's proposed response to the objection, with the expectation that
15 the ACHP will within thirty (30) days after receipt of such documentation:

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- 17 a. advise the BLM that the ACHP concurs in the BLM's proposed response to the
18 objection, whereupon the BLM will respond to the objection accordingly; or
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20 b. provide the BLM with recommendations, which the BLM will take into account in
21 reaching a final decision regarding its response to the objection; or
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23 c. notify the BLM that the objection will be referred for comment pursuant to 36 CFR §
24 800.7(c), and proceed to refer the objection and comment. The BLM shall take the
25 resulting comment into account in accordance with 36 CFR § 800.7(c)(4) and Section
26 110(1) of the NHPA.

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28 2. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of
29 all pertinent documentation, the BLM may assume the ACHP's concurrence in its proposed
30 response to the objection.

31

32 3. The BLM shall take into account any ACHP recommendation or comment provided in
33 accordance with this stipulation with reference only to the subject of the objection. The
34 BLM's responsibility to carry out all actions under this MOA that are not the subjects of the
35 objection will remain unchanged.

36

37 4. At any time during implementation of the measures stipulated in this MOA, should an
38 objection pertaining to such implementation be raised by a Tribe, the BLM shall notify the
39 other parties to the MOA in writing of the objection and take the objection into consideration.
40 The BLM shall consult with the objecting party and, if the objecting party so requests, with
41 the other parties to this MOA for no more than fifteen (15) days. Within ten (10) days
42 following closure of this consultation period, the BLM will render a decision regarding the
43 objection and notify all consulting parties hereunder of its decision in writing. In reaching its
44 decision, the BLM will take into account any comments from the consulting parties and the

1 objecting party regarding the objection. The BLM's decision regarding the resolution of the
2 objection will be final.

- 3
4 5. The BLM shall provide all parties to this MOA, and the ACHP when ACHP comments have
5 been issued hereunder, and any parties that have objected pursuant to paragraph 4. of section
6 B. of this stipulation, with a copy of its final written decision regarding any objection
7 addressed pursuant to this stipulation.
8
9 6. The BLM may authorize any action subject to objection under this stipulation to proceed after
10 the objection has been resolved in accordance with the terms of this stipulation.
11
12 7. Notwithstanding any provision of stipulation II.B., the Project and the Undertaking may
13 proceed without interruption during the resolution of any objections under this MOA.
14 Following resolution of any objection, the BLM shall ensure that measures required by such
15 resolution are carried out.

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17 **C. Amendments.**

- 18
19 1. Any party to this MOA may propose that this MOA be amended, whereupon the parties to
20 this MOA will consult for no more than fifteen (15) days to consider such amendment. The
21 amendment process shall comply with 36 CFR §§ 800.6(c)(1) and 800.6(c)(7). This MOA
22 may be amended only upon the written agreement of the signatory parties. If it is not
23 amended, this MOA may be terminated by either signatory party in accordance with
24 Stipulation II.D., below.
25
26 2. Attachment 1 (CRMP, including Appendices) to this MOA may be amended through
27 consultation among the parties to this MOA without amending the MOA proper.
28

29 **D. Termination.**

- 30
31 1. If this MOA is not amended as provided for in section C.1. of this stipulation, or if either
32 signatory party proposes termination of this MOA for other reasons, the signatory party
33 proposing termination shall, in writing, notify the other parties to this MOA, explain the
34 reasons for proposing termination, and consult with the other parties for at least thirty (30)
35 days to seek alternatives to termination. Such consultation shall not be required if the BLM
36 proposes termination because the Undertaking no longer meets the definition set forth in 36
37 CFR § 800.16(y).
38
39 2. Should such consultation result in an agreement on an alternative to termination, then the
40 consulting parties hereunder shall proceed in accordance with the terms of that agreement.
41
42 3. Should such consultation fail, the signatory party proposing termination may terminate this
43 MOA by promptly notifying the other parties to this MOA in writing. Termination hereunder
44 shall render this MOA without further force or effect.

1
2 4. If this MOA is terminated hereunder and if the BLM determines that the Undertaking and the
3 Project authorized by the Undertaking will nonetheless proceed, then the BLM shall either
4 consult in accordance with 36 CFR § 800.6 to develop a new MOA or request the comments
5 of the ACHP pursuant to 36 CFR Part 800.
6

7 **E. Duration of the MOA.**
8

- 9 1. Unless terminated pursuant to section D. of this stipulation, or unless it is superseded by an
10 amended MOA, this MOA will be in effect following execution by the signatory parties until
11 the BLM, in consultation with the other parties to this MOA, determines that all of its
12 stipulations have been satisfactorily fulfilled. Upon a determination by the BLM that all of
13 the terms of this MOA have been satisfactorily fulfilled, this MOA will terminate and have no
14 further force or effect. The BLM will promptly provide the other parties to the MOA with
15 written notice of its determination and of the termination of this MOA. Following provision
16 of such notice, this MOA will have no further force or effect.
17
- 18 2. The terms of this MOA shall be satisfactorily fulfilled within ten (10) years following the date
19 of execution by the SHPO. If the BLM determines that this requirement cannot be met, the
20 parties to this MOA will consult to reconsider its terms. Reconsideration may include
21 continuation of the MOA as originally executed, amendment, or termination. In the event of
22 termination, the BLM will comply with section D.4 of this stipulation if it determines that the
23 Undertaking and the Project authorized by the Undertaking will proceed notwithstanding
24 termination of this MOA.
25
- 26 3. If the Undertaking has not been implemented within ten (10) years following execution of this
27 MOA by the SHPO, this MOA shall automatically terminate and have no further force or
28 effect. In such event, the BLM shall notify the other parties to this MOA in writing and, if it
29 chooses to continue with the Undertaking and the Project authorized by the Undertaking, shall
30 reinitiate review of the Undertaking and the Project in accordance with 36 CFR Part 800.
31

32 **F. Effective Date of this MOA.** This MOA will take effect on the date that it has been
33 executed by the BLM and the SHPO.
34

35 **EXECUTION** of this MOA by the BLM and the SHPO, its transmittal by the BLM to the
36 ACHP in accordance with 36 CFR § 800.6(b)(1)(iv), and subsequent implementation of its
37 terms, shall evidence, pursuant to 36 CFR § 800.6(c), that this MOA is an agreement with the
38 ACHP for purposes of Section 110(1) of the NHPA, and shall further evidence that the BLM has
39 afforded the ACHP an opportunity to comment on the Undertaking and the Project and their
40 effects on historic properties, and that the BLM has taken into account the effects of the
41 Undertaking and the Project on historic properties.
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44

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HAVASU FIELD OFFICE

2004 SEP 16 A 11: 22

LAKE HAVASU CITY, AZ

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SIGNATORY PARTIES:

BUREAU OF LAND MANAGEMENT,
LAKE HAVASU FIELD OFFICE

By: Patricia Taylor Date: 9-14-04

Title: Acting Field Manager

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: Wayne O'Neil Date: 14 SEP 2004

Title: State Historic preservation officer

CONCURRING PARTY:

PACIFIC GAS & ELECTRIC COMPANY

By: Robert C. Diers Date: SEPT. 14, 2004

Title: PRINCIPAL ENGINEER, ENVIRONMENTAL AFFAIRS