



Preserving America's Heritage

May 31, 2017

Mr. Jason West  
Bureau of Land Management  
Field Manager  
Lake Havasu Field office  
1785 Kiowa Avenue  
Lake Havasu City, AZ

Ref: *Amendment 1 to the Topock Remediation Project Programmatic Agreement  
San Bernardino County, California and Mohave County, Arizona*

Dear Mr. West:

Enclosed is the executed Programmatic Agreement for the referenced project. By carrying out the terms of this Agreement, the Bureau of Land Management will have fulfilled its responsibilities under Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act.

Should you have any questions, please contact Nancy J. Brown, who can be reached at 202-517-0209 or [nbrown@achp.gov](mailto:nbrown@achp.gov).

Sincerely,

Tom McCulloch, Ph.D., R.P.A.  
Assistant Director  
Federal Property Management Section  
Office of Federal Agency Programs

Enclosure

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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1 AMENDMENT 1

2  
3 PROGRAMMATIC AGREEMENT  
4 AMONG THE  
5 BUREAU OF LAND MANAGEMENT, ARIZONA  
6 STATE HISTORIC PRESERVATION OFFICER, CALIFORNIA STATE  
7 HISTORIC PRESERVATION OFFICER AND THE ADVISORY COUNCIL ON  
8 HISTORIC PRESERVATION  
9 FOR THE  
10 TOPOCK REMEDIATION PROJECT  
11 IN SAN BERNARDINO COUNTY, CALIFORNIA,  
12 AND MOHAVE COUNTY, ARIZONA  
13

14 WHEREAS, the cited Programmatic Agreement (PA) for the Topock Remediation Project was  
15 executed on October 26, 2010; and  
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17 WHEREAS, the PA must be reviewed every five (5) years to assess the need for modification or  
18 amendment; and  
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20 WHEREAS, due to necessary project updates and revisions identified during the first Five-Year  
21 Review, the Signatories to the PA agree that it should be amended; and  
22

23 WHEREAS, the 2016 revisions (identified by 2016 preceding each insertion) supersede the previously  
24 agreed upon language and where there is disagreement, the 2016 updates shall be followed; and  
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26 NOW THEREFORE, in accordance with Stipulation XIV of the PA, the Signatories and  
27 Invited Signatories agree to amend the PA to read as follows:  
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29 FIRST AMENDED  
30 PROGRAMMATIC AGREEMENT  
31 AMONG THE  
32 BUREAU OF LAND MANAGEMENT, ARIZONA  
33 STATE HISTORIC PRESERVATION OFFICER, CALIFORNIA STATE  
34 HISTORIC PRESERVATION OFFICER AND THE ADVISORY COUNCIL ON  
35 HISTORIC PRESERVATION  
36 FOR THE  
37 TOPOCK REMEDIATION PROJECT  
38 IN SAN BERNARDINO COUNTY, CALIFORNIA,  
39 AND MOHAVE COUNTY, ARIZONA  
40

41 PREAMBLE  
42

43 The Pacific Gas and Electric Company (PG&E), as the Potentially Responsible Person (PRP),  
44 is performing remedial investigations and groundwater and soil removal and response actions  
45 pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act  
46 (CERCLA), (collectively referred to as the "Topock Remediation Project," "Project," or  
47 "Undertaking"). These actions, taken as a result of historic releases of hazardous substances that

48 caused soil and groundwater contamination in the vicinity of the PG&E Topock Compressor  
49 Station, are under the direction of the U.S. Department of the Interior Office of Environmental  
50 Policy and Compliance (DOI) and the California Department of Toxic Substances Control  
51 (DTSC). The Project is subject to requirements set forth under the Resource Conservation and  
52 Recovery Act (RCRA), the California Hazardous Waste Control Law (HWCL), and the National  
53 Oil and Hazardous Substances Pollution Contingency Plan (NCP).

54  
55 **The U.S. Bureau of Land Management (BLM)**, in carrying out its responsibilities as the lead  
56 Federal Agency for National Historic Preservation Act (NHPA) Section 106 compliance, has  
57 developed policies and procedures through its directives system to help guide BLM's planning  
58 and decision making as it affects historic and cultural properties specific to the Topock  
59 Remediation Project.

60  
61 **The BLM, Lake Havasu Field Office**, acts locally as the lead Federal Agency for purposes of  
62 compliance with Section 106 of the NHPA on behalf of DOI, the U.S. Bureau of Reclamation  
63 (USBR), and the U.S. Fish and Wildlife Service (USFWS). On July 11, 2005, PG&E entered  
64 into an Administrative Order on Consent under CERCLA with DOI, BLM, USBR, and the  
65 USFWS (hereinafter collectively referred to as "the Federal Agencies").

66  
67 **The U.S. Department of the Interior (DOI)**, as the lead Federal Agency with regulatory  
68 authority under the Comprehensive Environmental Response, Compensation and Liability Act  
69 (CERCLA), relies upon the Federal Agencies and the Office of the Solicitor regarding the  
70 Project for purposes of compliance with Section 106 of the NHPA.

71  
72 **Nine Tribes have been consulted by the BLM in development of this Programmatic**  
73 **Agreement (PA)**. The BLM has invited the Chemehuevi Indian Tribe, Cocopah Indian Tribe,  
74 Colorado River Indian Tribes, Fort Mojave Indian Tribe, Fort Yuma Quechan Tribe, Hualapai  
75 Tribe, Havasupai Tribe, Twenty-Nine Palms Band of Mission Indians, and the Yavapai-Prescott  
76 Indian Tribe (hereinafter, the Tribes) to participate in the Section 106 consultation process and to  
77 be Invited Signatories; and the Tribes provided significant input into the development of this PA.

78  
79 The Tribes, as full participants in carrying out their respective Tribal sovereign governmental  
80 obligations, accept the BLM as the lead Federal Agency regarding the Project. Participation and  
81 consultation will be in accordance both with the DOI's authorities and responsibilities under the  
82 above referenced Federal regulatory frameworks and with any applicable State laws and  
83 guidance. The BLM agrees that regulations implementing Section 106 of the NHPA recognize  
84 the historic and traditional interests of the Tribes. The Tribes believe that the area known as  
85 Topock and specifically the immediate Project area and Area of Potential Effect (APE), is part of  
86 a broader cultural landscape. The Tribes, as sovereign governments, recognize the Project to be  
87 of significant importance and agree that the primary objectives are remediation of historic  
88 contamination of the soil and groundwater by hazardous substances and prevention of further  
89 releases of any harmful materials within the cultural and natural environment of the Colorado  
90 River and, specifically, within the immediate Project area and APE.

91  
92 As a result of the consultation process, BLM understands the Tribes consider natural resources to  
93 be cultural resources. The Tribes believe environmental degradation is understood to violate

principles of long-term sustainable use which can affect multiple layers of cultural, economic, social, physical, and spiritual growth, which in turn impact the survival of environments, humans, and future generations. The Tribes request that BLM acknowledge the Topock cultural-natural landscape (above and below the surface; land, and waters) as having traditional interests for the Tribes, such that the BLM/DOI's decision-making process reflects adequate and mutually understood participation in accordance with Section 110(a)(2)(D) of the NHPA. The BLM acknowledges and respects these Tribal views and beliefs pertaining to the Topock cultural-natural landscape. With this mutually understood perspective, the Tribes and the BLM shall, in a spirit of positive collaboration, consult to develop a management strategy for maintaining properties that considers the preservation of their archaeological, historical, and cultural values and the avoidance of adverse effects in the light of the views of the Tribes.

The Fort Mojave Indian Tribe, Hualapai Tribe, Fort Yuma Quechan Tribe, Cocopah Indian Tribe, and the Yavapai-Prescott Tribe state that the Topock Maze and other Native American cultural properties do not exist in isolation from each other but, rather, as a part of a larger cultural area (to which these Tribes refer as a cultural landscape) that includes the Colorado River and extends beyond the limits of the APE and should not be understood merely as discrete or detached archaeological sites but as areas or districts of traditional religious and cultural value.

#### **RECITALS**

**2016. WHEREAS**, this PA was originally executed on October 26, 2010, and was first amended in 2016; and

**WHEREAS**, PG&E voluntarily entered into an Administrative Consent Agreement under the CERCLA with the DOI, BLM, USFWS, and USBR on July 11, 2005, and is performing investigation and groundwater and soil removal and remediation actions (collectively referred to as the "Topock Remediation Project") to respond to historic releases of hazardous substances resulting in soil and groundwater contamination in the vicinity of the PG&E Topock Compressor Station under the direction of the DOI's Office of Environmental Policy and Compliance and the California Department of Toxic Substances Control (DTSC). The Topock Remediation Project constitutes an Undertaking as defined at 36 CFR §800.16(y); and

**WHEREAS**, Time Critical Removal Actions have occurred with implementation of Interim Measures (IM) 1, 2, 3, at Area of Concern (AOC) 4; and other Time Critical Removal Actions may potentially be identified, as part of the Undertaking; and

**WHEREAS**, many of the consulted Tribes regard the Colorado River as the lifeblood of the people and a sacred place that figures in their creation stories and beliefs about the afterlife; and

**WHEREAS**, the BLM realizes that the Tribes have special expertise in identifying and assessing the eligibility of historic properties that may possess religious and cultural significance to them (per 36 CFR §800.4); and

139 **WHEREAS**, the BLM has determined that a traditional cultural property (TCP) or property of  
140 traditional religious and cultural significance within the APE as defined in Stipulation II hereof is  
141 eligible for inclusion on the National Register of Historic Places (NRHP) under criterion A as  
142 part of what the Tribes have identified as a larger area of traditional and cultural importance,  
143 whose boundaries have yet to be defined and will not be defined within the scope of this  
144 Undertaking, and will not be subject to any further concurrence regarding this determination of  
145 effect; and

146  
147 **WHEREAS**, a *Memorandum of Agreement between the Bureau of Land Management, Lake*  
148 *Havasu Field Office and the California State Historic Preservation Officer Regarding the*  
149 *Pacific Gas and Electric Topock Interim Measures No. 3 Expanded Groundwater Extraction and*  
150 *Treatment Project San Bernardino County, California* (MOA) was entered into between BLM,  
151 the California State Historic Preservation Office (CA SHPO), and PG&E on September 14,  
152 2004, under Section 106 of the NHPA for the Topock Interim Measures No. 3 Project (IM-3) and  
153 a Cultural Resources Management Plan (CRMP) was developed in September 2004 and revised  
154 by BLM in March 2008; and

155  
156 **2016. WHEREAS**, the CRMP was replaced by the Cultural and Historic Properties Management  
157 Plan (CHPMP) in 2012; and

158  
159 **WHEREAS**, previous consultation between the CA SHPO and BLM for the IM-3 undertaking  
160 concluded that the Project has resulted and will continue to result in adverse effects to historic  
161 properties; and

162  
163 **WHEREAS**, the Topock Remediation Project also has the potential to adversely affect cultural  
164 and historic properties that have previously been listed in or determined eligible for the NRHP,  
165 including but not limited to the Topock Maze (Locus A), portions of US Route 66, the Atlantic  
166 and Pacific Railroad Right-of-Way, three archaeological sites (CA-SBr-11697, 11700, and  
167 11701), and geoglyphs (including CA-SBr-5237 and others) located within the APE that may be  
168 deemed eligible after further review; and

169  
170 **WHEREAS**, this Undertaking requires a management framework for historic properties that will  
171 be implemented after the execution of this agreement in a manner that fulfills the requirements of  
172 Section 106 of the NHPA; and the Signatories have agreed to use a PA, as described in 36 CFR  
173 §800.14(b), as the appropriate vehicle for establishing a system for compliance with Section 106  
174 of the NHPA in this case because of the Undertaking's long-term character and the anticipated  
175 need for adjustments warrant a departure from the normal Section 106 process; and

176  
177 **WHEREAS**, the USBR and USFWS manage lands affected by the Topock Remediation Project  
178 and are therefore Invited Signatories to this PA; and

179  
180 **WHEREAS**, DTSC is the lead state agency for the purposes of oversight and implementation of  
181 the Topock Remediation Project under RCRA, pursuant to a voluntary Corrective Action  
182 Consent Agreement (CACA) entered into between DTSC and PG&E on February 26, 1996; and  
183

184 **WHEREAS**, PG&E, as the PRP for the Topock Remediation Project, is participating in  
185 consultation per 36 CFR §800.2(c)(4) and is an Invited Signatory to this PA; and

186  
187 **WHEREAS**, BLM has consulted with the Chemehuevi Indian Tribe, Cocopah Indian Tribe,  
188 Colorado River Indian Tribes, Fort Mojave Indian Tribe, Fort Yuma Quechan Tribe, Hualapai  
189 Tribe, Havasupai Tribe, Twenty-Nine Palms Band of Mission Indians, and the Yavapai-Prescott  
190 Indian Tribe per 36 CFR §800.2(c)(2)ii and has invited the Tribes to participate as Invited  
191 Signatories; and

192  
193 **WHEREAS**, actions associated with the Topock Remediation Project have occurred and will  
194 continue to occur in the state of California, the BLM has consulted, and shall continue to consult,  
195 with the CA SHPO on this Undertaking, and the CA SHPO is a Signatory to this PA; and

196  
197 **WHEREAS**, actions associated with the Topock Remediation Project have extended and may  
198 continue to extend into the state of Arizona, the BLM has consulted, and will continue to consult,  
199 with the Arizona State Historic Preservation Officer (AZ SHPO) on this Undertaking, and the  
200 AZ SHPO is a Signatory to this PA; and

201  
202 **WHEREAS**, BLM has consulted the Advisory Council on Historic Preservation (ACHP), and  
203 the ACHP, in its letter dated November 3, 2008, has agreed to participate in accordance with 36  
204 CFR §800.6(a), and the ACHP is a Signatory to this PA; and

205  
206 **WHEREAS**, from the Tribes' perspective, the physical and cultural landscapes provide a sense  
207 of place and identity, and Tribes map their relationship to such landscapes and each other over  
208 time, as part of their cultural heritage and lives; and

209  
210 **WHEREAS**, the Fort Mojave Indian Tribe is a landowner within the remediation footprint, is  
211 the closest reservation to the Topock area, and has cultural obligations to act as a caretaker of the  
212 area; and

213  
214 **WHEREAS**, historic and cultural properties and values on public lands administered by BLM,  
215 USBR, and USFWS fall under the protection of the NHPA, Archaeological Resources Protection  
216 Act (ARPA, P.L. 96-95, as amended), American Indian Religious Freedom Act (AIRFA, P.L. 95-  
217 341, as amended), and Native American Graves Protection and Repatriation Act (NAGPRA, P.L.  
218 101-601), applicable regulations (36 CFR §7, 60, 63, and 800; 43 CFR §10), and applicable  
219 Executive Orders (e.g., 13007, 13175, and 13287), and these have been considered during  
220 consultation for this PA; and

221  
222 **WHEREAS**, the DTSC, a Department under the State of California Environmental Protection  
223 Agency, is the lead State agency for the remediation activities at Topock; and

224  
225 **WHEREAS**, with execution of this PA and the adoption of the Cultural and Historic Properties  
226 Management Plan (CHPMP) as identified in Stipulation VII hereof, the BLM and CA SHPO  
227 agree the *Memorandum of Agreement between the Bureau of Land Management, Lake Havasu*  
228 *Field Office and the California State Historic Preservation Officer Regarding the Pacific Gas*  
229 *and Electric Topock Interim Measures No. 3 Expanded Groundwater Extraction and Treatment*

Project San Bernardino County, California (MOA) shall terminate and the Topock Interim Measure No. 3 shall be managed pursuant to the CHPMP; and

**WHEREAS**, based on the Groundwater Corrective Measures Study/Feasibility Study (CMS/FS) prepared by PG&E at the direction of DOI and DTSC, the following alternatives were considered for implementation for the Topock Remediation Project:

- A. No Action
- B. Monitored Natural Attenuation
- C. High Volume *in Situ* Treatment
- D. Sequential *in Situ* Treatment
- E. *In Situ* Treatment with Fresh Water Flushing
- F. Pump and Treat
- G. Combined Floodplain *in Situ*/Pump and Treat
- H. Combined Upland *in Situ*/Pump and Treat,
- I. Continued Operation of Interim Measures already in place; and

**WHEREAS**, after consultation with the Tribes, DOI determined in its Proposed Plan dated June 4, 2010, and DTSC determined in its Statement of Basis dated April 28, 2010, that based on the analysis and conclusions presented in the CMS/FS, those agencies' preferred alternative is Alternative E – *In Situ* Treatment with Fresh Water Flushing, with inclusion of monitored, natural attenuation as a long-term component. This is the Agencies' preferred alternative because it will achieve the remedial action objectives while substantially reducing the amount of hexavalent chromium in the groundwater in a reasonable time frame and will result in fewer adverse effects to cultural resources and biological resources, relative to the other alternatives considered; and

**2016. WHEREAS**, Alternate E – *In Situ* Treatment with Fresh Water Flushing was officially selected during DOI's signing of the Record of Decision (ROD) for the Groundwater Remedy on January 20, 2011.

**NOW, THEREFORE**, all Signatories and Invited Signatories agree that BLM, on behalf of the Federal Agencies, shall administer the Undertaking in accordance with the following stipulations to satisfy the Federal Agencies' Section 106 responsibilities for this Undertaking.

#### **AGREEMENT AND STIPULATIONS**

BLM agrees to ensure that the following Stipulations are carried out:

270 I. GENERAL PRINCIPLES

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272 The Federal Agencies, in consultation with the Tribes, SHPOs, ACHP, PG&E, and other  
273 interested parties, agree to:

- 274  
275 A. Select and implement, or cause to be implemented, an alternative or combination of  
276 alternatives to remediate the groundwater and soil contamination in a manner that  
277 fulfills the requirements of CERCLA and the CERCLA Records of Decision (RODs)  
278 and protects the Colorado River, human populations, and the natural environment to  
279 the maximum extent practicable.  
280  
281 B. Subject to I(A), carry out, and require others under their jurisdiction to carry out, all  
282 investigative, testing, and remediation activities, including all supporting operations  
283 and maintenance activities, in ways that avoid, minimize, or mitigate adverse effects  
284 to cultural and historic properties within the APE, to the maximum extent practicable.  
285  
286 C. Respect Tribes' rights to express their traditional cultural values, including those  
287 associated with their religions, and their right to access Federally managed lands to  
288 conduct cultural and religious practices, as variously specified in E.O. 13007, the  
289 Religious Freedom Restoration Act (RFRA) and the American Indian Religious  
290 Freedom Act (AIRFA). Additionally, the BLM, USFWS, USBR, and PG&E shall  
291 consult with the Tribes that attach cultural significance to the TCP within the APE to  
292 develop a plan to ensure Tribal access to areas within the APE for traditional  
293 religious, cultural, or spiritual purposes. Access shall be consistent with applicable  
294 laws, regulations, and agreements governing property within the APE and may not  
295 impede the Topock Remediation Project, may not create health and safety concerns,  
296 and shall exclude the Topock Compressor Station and related facilities.  
297  
298 D. Ensure that PG&E shall, to the extent practicable, restore the areas affected by the  
299 Topock Remediation Project within the APE including, but not limited to, the site of  
300 the existing treatment plant and related facilities but excluding the Topock  
301 Compressor Station and related facilities to the conditions existing prior to the  
302 construction of the PG&E investigation and remediation related appurtenances and  
303 facilities.  
304  
305 E. Consult with the other Signatories, Tribes, and Invited Signatories, following the  
306 guidelines in Appendix B of this PA, regarding actions proposed in this Undertaking,  
307 including establishment of any rights of way, time critical, or emergency actions.  
308  
309 F. Recognize that the environmental setting for the Topock Maze and its relationship  
310 and association to cultural and religious sites which are outside the APE relates to the  
311 historic and cultural significance of the Topock Maze.  
312  
313 G. Recognize that on-going consultation between Signatories, Invited Signatories, and  
314 the Tribes will continue outside of this PA to further address mitigation of direct,  
315 indirect, and cumulative effects of the Topock Project. Mitigation topics may include  
316 but not be limited to:



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1. Measures to restore the land and its life-forms, to improve Tribal access, and reduce incompatible uses.
  2. Measures to strengthen traditional spiritual, cultural, and funerary traditions.
  3. Specific measures to mitigate adverse effects or adverse cumulative effects important to the Tribes will be addressed in the development of the CHPMP specified in Section VII of this PA.

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H. Endeavor, in consultation with Tribes, to manage Federal lands, Federal assistance activities, and Federal permitting and licensing responsibilities in ways that reduce adverse effects to the Topock Maze and other geoglyph sites in the area and facilitate Tribal access to them and allow continuance of Tribal cultural practices in accordance with the principles set forth in this Stipulation. Cumulative effects to both tangible and intangible cultural resources occurring in areas beyond the Maze but within the APE will be considered during the consultation process. The Agencies will consult with Tribes to identify Tribal concerns prior to initiating or permitting activities that may create such effects.

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I. Acknowledge that one hundred sixty-five (165) archaeological sites consisting of one hundred forty-three (143) prehistoric and twenty-three(23) historic sites, an additional thirty-six(36) isolated prehistoric artifacts or features, and three (3) isolated historic artifacts are identified in Appendix E, the most current inventory of archaeological and historical resources within the Original APE and Expanded APE of the Topock IM No. 3 Project, that any of the one hundred sixty-five (165) archaeological and historic sites that have not been formally evaluated for inclusion on the National Register of Historic Places (NRHP) will be treated as eligible for inclusion on the NRHP for the purposes of this PA.

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2016: Acknowledge that 227 archaeological and historical sites (including Isolated Finds) have been identified in the APE at the time of this Amendment. Hereafter, Appendix E of the CHPMP will be updated to reflect additional sites identified through future inventories or discoveries.

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## II. AREA OF POTENTIAL EFFECT (APE)

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A. APE means the geographic area or areas within which an Undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an Undertaking and may be different for different kinds of effects caused by the Undertaking. (36 CFR §800.16 (d)). Adverse effects to historic properties include, but are not limited to: physical destruction or alteration of a property or introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features (36 CFR §800.5(a) (2)). There is potential for indirect and cumulative effects on these other sites and properties. Adverse effects may include reasonably

foreseeable effects caused by the undertaking that may occur later in time, be further removed in distance, or be cumulative (36 CFR §800.5(a)(1)).

The APE for this Undertaking is initially comprised of 1,600.69 acres of surface area and a section of the Colorado River and is shown on the map attached hereto as Appendix A. The APE includes land and property interests owned or managed by public and private entities including BLM, USBR, USFWS, Fort Mojave Indian Tribe, San Bernardino County, Burlington Northern Santa Fe Railroad, PG&E, and the Los Angeles Metropolitan Water District. In addition, several entities have easements and/or rights-of-way, including California Department of Transportation (Caltrans), San Bernardino County, Mohave County, Southern California Gas, Transwestern Gas Pipeline Company, Mojave Gas Pipeline Company, PG&E, City of Needles Electric, Southwest Gas Corporation, and Frontier Communications. The Undertaking will occur in an environmental setting that includes the Topock Maze and its relationship and association to other sites and properties which are outside the APE but may relate to the historic and cultural significance of the Topock Maze that could be affected by implementation of the Undertaking. If additional information reveals indirect and/or cumulative effects on other properties eligible for listing on the NRHP, revision of the APE may be appropriate.

**2016.** The APE was 1,628.36 acres (corrected to reflect accurate Global Information System [GIS] calculations) as depicted in the 2010 PA. Subsequent changes in the APE will be addressed in future revisions of the CHPMP (per Section 6.9 of that document).

- B. At each phase (work plan or design document) of implementation of the Undertaking, an evaluation will occur to determine if the APE should be amended. This evaluation will coincide with the development of the work plan or design document for the specific phase of the Undertaking. Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts (36 CFR §800.4(b)(2)). Prior to implementation of each phase (work plan or design document) of the Undertaking, BLM will determine, in consultation with the AZ SHPO, CA SHPO, Tribes, and PG&E, what, if any, changes are required in the APE. If BLM determines that the APE must be revised, BLM will redefine the APE taking the input from those parties into account. Should such revision to the APE be needed, BLM will amend the CHPMP to include any changes to the APE.

Any Signatory or Invited Signatory to this PA may propose that the APE be modified. BLM shall notify all Signatories and Invited Signatories of the proposal and consult with the Tribes, PG&E, the AZ SHPO, and the CA SHPO for no more than thirty (30) days after such notification to attempt to reach agreement on the proposal according to guidance found at 36 CFR §800.4(a). If an agreement is reached, BLM will ensure that a description and map of the modification is provided to all Signatories and Invited Signatories. Agreement to amend the APE, by itself, will not require an amendment to the PA but will be subject to all other stipulations of this PA.

If final agreement cannot be reached on a proposed modification to the APE, dispute resolution procedures as described in Stipulation XV will be followed.

### III. REMEDIATING GROUNDWATER CONTAMINATION

- A. The DOI, pursuant to its CERCLA response action authority, expects to select a remedial action addressing groundwater contamination in the vicinity of the Topock Compressor Station and later expects to select remedial action addressing contamination of soils and subsurface soils. Each of these remedial actions will be selected through the issuance of a CERCLA ROD. Each ROD (for groundwater remediation and for soil remediation) will establish Cleanup Standards established to address unacceptable risks to human health and the environment, and attain applicable or relevant and appropriate requirements (ARARs). Substantive mitigation measures, including those that may be identified in this PA and through ongoing consultation, that DOI adopts to mitigate, minimize, or avoid adverse effects of these remedial actions on cultural and historic properties within the APE, will be adopted as ARARs and attained through implementation of the CERCLA remedial actions.

Based on the specific circumstances presented at the Topock site, DOI has determined that Alternatives A, B, and I do not satisfy all identified ARARs and cannot be stand-alone remedies. Attaining ARARs is a threshold criterion which must be satisfied, unless the ARAR is waived, for an alternative to be selected as a CERCLA remedial action. Alternatives A, B, and I do not satisfy the "reasonable time frame" requirement established by the California State Water Resources Control Board (hereinafter, "the Water Board") Resolution 92-49. This Resolution requires that the selected remedy has "a substantial likelihood to achieve compliance, within a reasonable time frame, with the cleanup goals and objectives" established for a site. The Water Board has interpreted this requirement in light of the specific alternatives under consideration at the Topock site and has concluded: "With respect to the nine alternatives and estimated cleanup time frames described in PG&E's draft Corrective Measures Study/Feasibility Study (CMS/FS), dated January 2009, Alternatives A, B, and I would not comply with the 'reasonable time frame' provision in Section III.A. of Resolution 92-49. Alternatives C through H would comply with this provision." Based on the analysis and supporting information provided by the Water Board, DOI has concurred with the Water Board's interpretation of this Resolution as it pertains to the Topock site.

In selecting an alternative to implement the groundwater remediation element of the Topock Remediation Project, BLM will ensure that the Federal Agencies, in continuing consultation with the Signatories and Invited Signatories, have given full and fair consideration to the following:

- 451 1. *Alternative B (Monitored Natural Attenuation)*. Natural reducing conditions,  
452 which are an integral part of natural attenuation, are present at the site where  
453 hexavalent chromium is converted to its stable form of Cr (III) and is essentially  
454 immobile. Natural attenuation, therefore, can be utilized in conjunction with other  
455 alternatives. Monitored natural attenuation could reduce the effects on properties  
456 eligible or listed on the National Register and associated cultural values resulting  
457 from continued treatment system operation and monitoring.  
458
- 459 2. *Alternative E (In situ treatment with freshwater flushing)*, as currently represented  
460 in planning documents, would have more effect on cultural values than  
461 Alternatives A or B but would have relatively fewer physical effects than the  
462 other active remedies (e.g., fewer upland facilities, fewer onsite personnel, and no  
463 new aboveground treatment plants). It is thus preferable to alternatives C, D, F, G,  
464 and H from the standpoint of Tribal cultural values.  
465
- 466 3. *Alternatives C, D, F, G, and H*, or any combination thereof, are not preferred from  
467 the perspective of Tribal cultural values, because they pose adverse effects  
468 stemming from one or more of the following: additional wells, activity in the  
469 particularly sensitive upland areas, maintaining treatment facilities within the  
470 Topock Maze complex, or new, larger treatment plant facilities.  
471

472 B. Once a ROD for remediation of groundwater has been issued, the parties to this PA  
473 and Tribes who choose not to sign this PA will consult to determine the need for  
474 amendments to this PA or editing and expansion of the CHPMP to incorporate new  
475 information regarding the selected remedy's impacts and mitigation. Flexible decision  
476 making will be essential for ensuring that appropriate mitigation measures are applied  
477 at the appropriate time.  
478

- 479 1. Should Monitored Natural Attenuation be included as a component of the selected  
480 remedy for the Project area, the Federal Agencies will determine, in consultation  
481 with the Signatories and Invited Signatories, how best to ensure that:  
482
- 483 a. Existing monitoring wells and related facilities shall be used to the maximum  
484 extent practicable.  
485
- 486 2. **2016.** The selection of Alternate E was made official with DOI's signing of the  
487 ROD for the Groundwater Remedy on January 20, 2011. Federal agencies will  
488 ensure, consistent with the principles set forth in Stipulation I, that:  
489
- 490 a. Existing monitoring wells and related facilities shall be used to the maximum  
491 extent practicable.  
492
- 493 b. The need for and placement of any new facilities or activities will be  
494 determined in consultation with the Tribes and the Consulting Parties  
495 following the guidelines in Appendix B.  
496

- 497 c. New facilities or activities will be placed in areas already disturbed by  
498 previous grading and other mechanized activities to the extent practicable,  
499 consistent with protecting human health and the environment and achieving  
500 cleanup in a timely manner.
- 501
- 502 d. The Federal Agencies will develop a brochure to notify other state and  
503 Federal agencies of the Signatories' and Invited Signatories' concerns with  
504 the actions to be taken within the vicinity of the Topock Remediation Project  
505 and the Topock Maze.
- 506
- 507 e. The performance of all field activities in support of the remedy shall be  
508 executed in such a way as to avoid and/or minimize adverse effects to  
509 cultural and historic properties to the maximum extent practicable.
- 510
- 511 f. Subject to Stipulation I (A), direct, indirect, and cumulative adverse effects  
512 shall be considered and mitigated.
- 513
- 514 g. Should any other alternative, including but not limited to Alternative C, D, F,  
515 G, or H or any combination thereof, be selected, the Federal Agencies shall  
516 re-open consultation with the Signatories, Tribes, and Invited Signatories to  
517 this PA to seek an amendment in accordance with Stipulation XIV hereof. In  
518 the event that any such amendment should be required, the Signatories and  
519 Invited Signatories agree to exercise their best efforts in order not to impede,  
520 or delay unnecessarily, issuance of the ROD or implementation of the  
521 groundwater remedy.
- 522
- 523 3. Because the final design of the selected remedy will likely differ from its  
524 conceptual design, the Federal agencies shall ensure that:
- 525
- 526 a. Consultation between the Signatories, Tribes, and Invited Signatories shall be  
527 initiated prior to final design and implementation of that alternative.
- 528
- 529 b. Every effort shall be made to avoid and/or minimize adverse effects in  
530 accordance with the principles set forth in Stipulation I.
- 531
- 532 c. Whatever the selected alternative, the Federal Agencies will consult with  
533 Signatories, Tribes, and Invited Signatories during design, implementation,  
534 and monitoring activities to determine how best to restore the areas affected  
535 by the Topock Remediation Project. These areas will include, but not be  
536 limited to, the site of the existing treatment plant and related facilities but will  
537 exclude the Topock Compressor Station and related facilities. The Federal  
538 Agencies will ensure that environmental restoration to the conditions existing  
539 prior to the construction of the Project is planned and conducted to the extent  
540 practicable.
- 541
- 542 4. The mitigation measures described above are based on information known as the  
543 execution of the PA. Future studies, work plans, or environmental review

documents may identify additional adverse effects and the need for additional consultation with Signatories, Invited Signatories, and Tribes, regarding appropriate mitigation measures and are in no way precluded by this PA. Should additional adverse effects be identified through consultation on future studies, work plans, or review documents, the Federal Agencies will incorporate mitigation measures in the Treatment Plan included in the CHPMP as described in Stipulation VII (B) of this PA.

#### IV. CHARACTERIZING, REMEDIATING, AND MITIGATING SOILS CONTAMINATION

A. At the time of the execution of this PA, soil investigations are ongoing for the Topock Compressor Station and surrounding area. The Federal Agencies will ensure that:

1. Consultation between the Signatories, Tribes, and Invited Signatories shall continue during development of the work plans for Soil Part A, Phase II Investigation, and Soil Part B Investigation. Should additional adverse effects be identified through consultation on future studies or work plans, the Federal Agencies will incorporate mitigation measures in the Treatment Plan included in the CHPMP as described in Stipulation VII (B) of this PA.
2. Every effort shall be made to avoid and/or minimize adverse effects to the maximum extent practicable, in accordance with the principles set forth in Stipulation I. Tribal and Archaeological Monitors shall be authorized to monitor all such related activities in accordance with Appendix C.

B. Once a CMS/FS for remediation of soils has been prepared, the parties to this PA agree to engage in consultations to determine the need for amendments to this PA or editing and expansion of the CHPMP to incorporate new information regarding soils remediation alternatives, adverse effects, and mitigation. The Federal Agencies will ensure that:

1. As a general rule, only soils that have been contaminated by human activity are to be remediated. Response actions to address contaminated soils will be selected in compliance with the requirements of CERCLA. No soils remediation or mitigation will proceed until consultation with all Signatories and Invited Signatories has been completed in accordance with guidelines in Appendix B.
2. Any and all projects to remove or otherwise remediate the contamination of soils are planned in accordance with the principles set forth in Stipulation I of this PA.
3. Tribal and Archaeological Monitors shall be authorized to monitor all soils characterization, remediation, and mitigation activities in accordance with Appendix C.
4. Because the final design of the selected remedy may differ from its conceptual design, the Federal Agencies agree to ensure that:

- 591
- 592 a. Consultation between the Signatories, Tribes, and Invited Signatories is
- 593 initiated prior to final design of the selected remedy.
- 594
- 595 b. Every effort shall be made to avoid and minimize adverse effects to the
- 596 maximum extent practicable, in accordance with the principles set forth in
- 597 Stipulation I.
- 598
- 599 5. The mitigation measures are based on information known as of the execution of
- 600 the PA. Studies, work plans, and environmental documents may identify
- 601 additional adverse effects and mitigation measures, in consultation with
- 602 Signatories, Tribes, and Invited Signatories, which will not be precluded by this
- 603 PA.
- 604
- 605 a. Whatever the selected alternative, the Federal Agencies will consult with all
- 606 Signatories, Tribes, and Invited Signatories during the design activities to
- 607 determine how to best restore the areas affected by the Topock Remediation
- 608 Project. These areas include, but are not limited to, the site of the existing
- 609 treatment plant and related facilities, but exclude the Topock Compressor Station
- 610 and related facilities to ensure that environmental restoration to the conditions
- 611 existing prior to the construction of the Project is planned and conducted, to the
- 612 extent practicable.
- 613
- 614 b. BLM will include the results of consultation as part of the Treatment Plan
- 615 specified in the CHPMP and document specific consultation activities as part of
- 616 the administrative record.

617 **V. REMOVAL OF EXISTING TREATMENT PLANT AND OTHER**

618 **REMEDICATION FACILITIES**

619

- 620 A. All facilities and appurtenances related to the Topock Remediation Project are to be
- 621 removed as soon as practicable upon attainment of cleanup standards and a
- 622 determination by DOI that removal of such facilities is protective of human health
- 623 and the environment. All such removal will be planned in consultation with the
- 624 Signatories, Tribes, and Invited Signatories following the guidelines in Appendix B.
- 625
- 626 B. The removal of such facilities shall be monitored following the monitoring guidelines
- 627 in Appendix C.
- 628
- 629 C. The removal of such facilities shall take place along existing graded roads to the
- 630 maximum extent practicable.
- 631
- 632 D. Prior to decommissioning of any remediation facility, the Federal Agencies will
- 633 consult with all Signatories, Tribes, and Invited Signatories during the development
- 634 of the closure plan to determine how to best restore the areas affected by the Topock
- 635 Remediation Project, including, but not limited to, the site of the existing treatment
- 636 plant and related facilities, but excluding the Topock Compressor Station and related

637 facilities, to ensure that environmental restoration of conditions existing prior to the  
638 construction of the Project is achieved to the extent practicable.  
639

- 640 E. PG&E will draft a plan for decommissioning, removal, and restoration of the IM-3  
641 facility prior to implementation of the groundwater remedy in consultation with all  
642 Signatories, Tribes, and Invited Signatories.  
643

## 644 VI. INTERIM MEASURES FOR IMPLEMENTATION OF THE UNDERTAKING 645

646 The CRMP was developed to address historical and archeological issues. BLM will  
647 consult with the Signatories, Tribes, and Invited Signatories in order to take into  
648 account Tribal and cultural values that were not addressed in the CRMP. Until such  
649 time as the CHPMP as described in Stipulation VII has been finalized, BLM shall  
650 continue to implement the CRMP as distributed to all Signatories, Tribes, and Invited  
651 Signatories in March 2008 (attached hereto as Appendix H).  
652

653 Until such time as the CHPMP as described in Stipulation VII has been finalized, the  
654 BLM will utilize the State Protocol Agreements between the California and Arizona  
655 State Directors of the BLM and the California and Arizona SHPOs which outline how  
656 the BLM will meet its responsibilities under the NHPA and the *Programmatic*  
657 *Agreement Among the Bureau of Land Management, the Advisory Council on Historic*  
658 *Preservation, and the National Conference of State Historic Preservation Officers*  
659 *Regarding the Manner in Which BLM will Meet Its Responsibilities Under the National*  
660 *Historic Preservation Act (1997).*

661 2016. The CHPMP replaced the CRMP in 2012.  
662

## 663 VII. CULTURAL AND HISTORIC PROPERTIES MANAGEMENT PLAN 664

- 665 A. The BLM will be responsible for the development of a CHPMP that specifies how  
666 cultural and historic properties within the APE are to be treated during  
667 implementation of the Undertaking. BLM will consult with all Signatories, Tribes,  
668 and Invited Signatories to this PA in the development of the CHPMP. The CHPMP  
669 will be finalized by the BLM no later than one year after signing of the ROD for the  
670 ground water remediation phase of the Undertaking. The requirements of the CRMP  
671 as distributed to all Signatories, Tribes, and Invited Signatories in March 2008  
672 (attached hereto as Appendix H) for IM-3 will remain in effect until execution of the  
673 CHPMP. Upon execution, the CHPMP will supersede the CRMP.  
674

675 2016. The CHPMP was finalized in 2012.

- 676 B. The CHPMP will provide a Treatment Plan which incorporates and is consistent with  
677 the principles in Stipulation I and the mitigation measures contained in this PA to  
678 avoid, minimize, or mitigate adverse effects to cultural and historic properties within  
679 the APE. The Treatment Plan will provide a description of known cultural and  
680 historic properties within the APE. For each type of historic property, the Treatment  
681 Plan will describe mitigation measures and include those taken from this PA that  
might be used to avoid, minimize, or mitigate adverse effects to the cultural and



historic properties within the area of the Undertaking. Should a proposed action be determined to have an adverse effect, the Treatment Plan would be used as the first point of reference in developing a specific course of action that would address how best to avoid, minimize, or mitigate the adverse effect.

**2016.** A draft Historic Properties Treatment Plan (HPTP) for Groundwater Remediation was developed in 2014 and will be revised by DTSC and BLM in consultation with Signatories, Invited Signatories and Tribes in 2016/2017. The revised HPTP will address mitigation measures for cultural resources in the Environmental Impact Report prepared for the Groundwater Remedy under the California Environmental Quality Act (CEQA) and will help resolve the Project's adverse effects to historic properties as required by Section 106 of the NHPA. Treatments to historic properties may be phased as necessary.

- C. The stipulations within the CRMP for IM-3 shall be considered for adoption within the CHPMP.
- D. The CHPMP will include a listing and maps of all cultural and historic resources associated with the Undertaking within the APE, including properties already on the NRHP, and properties determined eligible for inclusion on the NRHP (in a manner consistent with Stipulation XII, Confidentiality).
- E. The CHPMP will include sections that describe the specific steps to be taken if previously unrecorded resources are located or if the Undertaking extends beyond the APE (as defined in Stipulation II(A), see also Appendix A Map), relative to identification, evaluation, and treatment of cultural and historic resources.
- F. After consultation with all Signatories, Tribes, and Invited Signatories, the BLM may amend the finalized CHPMP as additional information is developed regarding cultural and historic resources within the APE, in the event that the APE is revised, and for any other reasons determined appropriate by BLM. Revision of the CHPMP shall not require an amendment of the PA. The CHPMP may be revised in phases as the Undertaking progresses.
- G. The CHPMP will include a discovery plan consistent with stipulation IX(C).

**2016.** A Discovery Plan was added to the CHPMP as Appendix C and is the main document to reference in discovery situations.

- H. The CHPMP will contain a Plan of Action (POA) for use in the event of discovery of human remains within the APE, which will address the roles of the Signatories, Tribes, and Invited Signatories. The BLM will be the lead Federal Agency responsible for seeing that the terms of the POA are executed. The POA will specify how each Tribe wishes to be contacted and involved in the event of an unanticipated discovery of human remains within the APE, as described in NAGPRA and all other applicable State and Federal laws pertaining to human remains and funerary objects, ceremonial items, and items of cultural patrimony. Human remains and funerary

objects must be treated in a culturally appropriate and respectful manner.

**2016.** A POA was added to the CHPMP as Appendix D and is the main document to reference if human remains are encountered.

- I. BLM shall remain responsible for making all recommendations and determinations of significance, eligibility, and treatment of cultural and historic properties related to the Undertaking. BLM will consult with all Signatories, Tribes, and Invited Signatories according to the procedures contained in Appendix B of this PA before finalizing recommendations, determinations, and treatment plans.

## **VIII. IDENTIFICATION OF NATIONAL REGISTER OF HISTORIC PLACES PROPERTIES**

BLM shall solicit additional input from the Tribes pertaining to the traditional religious and cultural significance of the Topock Maze, including loci B and C, and any other associated contributing properties. In consultation with the Tribes and Signatories to this PA, no later than one year from execution of the PA, a decision will be made regarding moving forward with a formal nomination to the NRHP for the traditional and religious property/TCP associated with the Topock Maze and this Undertaking.

**2016.** The BLM will continue to consult with Signatories, Invited Signatories, and Tribes to determine culturally respectful documentation of the Topock Maze which may include formal nomination to the National Register of Historic Places. BLM will afford CASHPO, AZSHPO, ACHP, and Tribes 30 days to comment on any planned documentation prior to implementing the plan.

## **IX. DISCOVERIES**

- A. If the Undertaking affects a previously unidentified cultural and/or historic resource, including human remains and/or associated funerary objects or grave goods, or affects such resources in a way not previously anticipated, or have greater adverse effect than previously anticipated, all work in the vicinity of the discovery shall cease. No further action will be taken until the BLM, in consultation with Tribal and Archaeological Monitors and PG&E in the field, has determined the nature of the discovery and delineated an area not to exceed fifty (50) meters from the approximate center point of the discovery (or a smaller or larger area if warranted by specific circumstances) in which no further work is to take place until treatment of the discovery is resolved. At such point, BLM will notify all Signatories, Invited Signatories, and Tribes of the nature and general location of the discovery. The BLM will implement appropriate measures, including stabilization or covering, to protect any discovery (human remains, funerary objects, sacred objects, or objects of cultural patrimony) from further disturbance in accordance with the principles set forth in Stipulation I. Ongoing work not within fifty (50) meters (or a smaller area if determined appropriate by parties in the field) of the discovery may continue. If human remains and/or associated funerary objects compose all or part of the discovery, then BLM shall

773 ensure the stipulations of the POA included in the CHPMP, as described in  
774 Stipulation VII (H) hereof, will be completed. Also, if human remains and/or  
775 funerary objects are encountered, all activities shall follow the procedures and  
776 direction provided in NAGPRA and California Public Resources Code sections  
777 5097.98 and 5097.991. For Arizona, such activities shall follow the procedures  
778 and direction provided in NAGPRA and applicable state laws, including the  
779 Arizona Antiquities Act of 1927 (ARS §41-841 to 41-846), Burial Protection Law  
780 of 1990 (ARS §41-865), and ARS §41-844 of 1990.

781 **2016.** The BLM, in consultation with Signatories, Invited Signatories, and Tribes,  
782 will implement appropriate measures, including stabilization or covering, to protect  
783 any discovery (human remains, funerary objects, sacred objects, or objects of cultural  
784 patrimony) from further disturbance in accordance with principles set forth in  
785 Stipulation I.

786 **2016.** The Discovery Plan and/or Plan of Action (CHPMP, Appendices C and D) will  
787 be followed if previously unrecorded resources, human remains, or items of cultural  
788 patrimony are discovered.

789 B. If the Tribes, PG&E, and BLM can resolve treatment of the discovery in a manner  
790 that does not cause adverse effects to significant cultural and historic properties, BLM  
791 shall document the resolution, the activities within the work area may proceed and the  
792 AZ SHPO and the CA SHPO shall be notified of the discovery and resolution. The  
793 Tribes, PG&E, and BLM will use their best efforts to resolve treatment as quickly as  
794 possible.

795 C. If there is failure to resolve treatment of the discovery in consultation with the Tribes  
796 and PG&E, BLM shall then consult with the AZ SHPO or the CA SHPO to develop a  
797 treatment plan that takes into account the effects of the Undertaking on the discovery.  
798 Within fifteen (15) days of notification of discovery, BLM shall provide the consulted  
799 SHPO(s), via email, a recommendation for resolving the discovery situation that takes  
800 into account the potential effects of the Undertaking on the discovery.

801  
802 D. If the CA SHPO or AZ SHPO (as appropriate, depending on the location of the  
803 discovery) does not object to BLM's recommendation(s) within fifteen (15) days,  
804 BLM will implement the recommendation(s). If the consulted SHPO objects to the  
805 recommendation, BLM will utilize the dispute resolution process in Stipulation XV of  
806 this PA to resolve any objection.

## 807 808 **X. ADMINISTRATIVE STIPULATIONS**

809  
810 If, in the judgment of DTSC, Federal Agencies, or other qualified monitoring entities,  
811 there is an imminent threat of contamination to the Colorado River or to human health,  
812 implementation of measures to address the imminent threat will take precedence over  
813 compliance with the stipulations of this PA. If such measures must be implemented as  
814 determined by DTSC or DOI, additional ground-disturbing activities or construction of  
815 facilities will be minimized to the extent practicable and operation will continue until

such time as the imminent threat is alleviated. The PA will be followed to the extent practicable during an imminent threat.

## XI. STANDARDS

A. All actions prescribed by this PA that involve the identification, evaluation, analysis, recordation, treatment, archaeological monitoring, and disposition of historic properties and that involve the reporting and documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (PQS) for archaeology, history, or architectural history, as appropriate (48 FR 44739). However, nothing in this stipulation may be interpreted to preclude any party qualified under the terms of this paragraph from using the services of properly supervised persons who do not meet the PQS.

B. When documentation of non-archaeological cultural and historic properties, TCPs, or other types of evidence is deemed necessary by the BLM in order to further document the effects of any proposed Undertaking, the guidelines found in National Register Bulletin 38, Appendix G: Professional Qualifications: Ethnography should be followed to the extent practicable, as determined by the BLM.

C. Tribal Qualifications: Tribal experts on their cultures and religions shall not be subject to Stipulation XI (A). Qualified Tribal Monitors shall be an authorized representative of the Tribe with the qualifications the Tribe deems necessary.

D. Consistent with paragraphs A, B, and C above, reporting on and documenting the actions cited in paragraph A. of this stipulation shall conform to BLM 8100 Manual guidance as stipulated in the BLM Cultural Resources Use Permit and Field Authorizations for this Undertaking, and to every reasonable extent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740), as well as the California Office of Historic Preservation's *Preservation Planning Bulletin Number 4(a), December 1989, Archaeological Resource Management Reports (ARMR); Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports*, and the Arizona State Historic Preservation Office's *Standards for Conducting and Reporting Cultural Resources Surveys, the Guidance Point Series, and Recommended Standards for Monitoring, Testing, and Data Recovery* (Arizona State Museum), and any specific county or local requirements or report formats as necessary.

## XII. CONFIDENTIALITY

A. To the maximum extent allowed by law, the Signatories and Invited Signatories shall maintain the confidentiality of records, data, and information pertaining to the location, nature, practices, and use of cultural resources, including cultural and historic properties about which there are culturally sensitive issues, as consistent with

NHPA §304, ARPA §9, and California Government Code §6254.10. Such culturally sensitive issues will be determined by BLM through consultation with the concerned tribes.

2016. Tribal Cultural Knowledge and confidential information shared with government agencies will be kept from public access per NHPA § 304.

B. Records describing, listing, or illustrating the locations of historic properties, and any other records arguably exempt from public disclosure in the judgment of the Federal Agencies, shall be labeled "Confidential, Not for Public Release." These records will be part of the Project record but will not be considered part of the public record for the Topock Remediation Project.

C. These provisions shall not be construed to prevent Invited Signatory Tribes from accessing cultural resources documentation in project records held by the Federal and State Government for interpreting their history, or for other cultural usage.

### XIII. CURATION

A. Federal Lands: As appropriate, BLM shall consult with the Signatories, Tribes, and Invited Signatories to establish the appropriate disposition of any Native American cultural items recovered from Federal lands and shall repatriate all such items in compliance with Federal laws. Cultural items subject to NAGPRA shall be treated according to the provisions of NAGPRA, 43 CFR §10. Where Federal lands are involved, all appropriate records and materials resulting from implementation of this PA, except for those items that are subject to the provisions of NAGPRA, 43 CFR §10, shall be curated in accordance with 36 CFR §79, as applicable.

B. Tribal Lands: On lands owned by the Tribes, cultural material will remain with the Tribes. Material from the IM-3 property shall remain with the Fort Mojave Indian Tribe.

C. State Lands: If human remains and/or funerary objects are encountered, all activities shall follow the procedures and direction provided in NAGPRA and California Public Resources Code sections 5097.98 and 5097.991. For Arizona, such activities shall follow the procedures and direction provided in NAGPRA and Arizona Antiquities Act of 1927 (ARS §41841 to 41-846), Burial Protection Law of 1990 (ARS §41-865), and (ARS §41-844 of 1990).

D. Private Lands: If cultural materials are recovered from private lands, BLM will seek to have the materials donated through a written donation agreement to the closest culturally affiliated Tribe. If such an agreement is not executed, BLM will attempt to have all collections curated at one location appropriate to each State and County. To the extent permitted under §5097.98 and §5097.991 of the California Public Resources Code, the items, materials, and records resulting from implementation of this PA and located on non-Federal lands shall be curated in accordance with 36 CFR §79.

908  
909 E. Cultural materials (with the exception of human remains, funerary objects, sacred  
910 objects, ceremonial items, or items of cultural patrimony) recovered from within the  
911 Project Area shall be curated and have laboratory work undertaken as close as  
912 possible to the originating location and the culturally affiliated peoples.  
913

914 F. Human remains, funerary objects, sacred objects, ceremonial items, or items of  
915 cultural patrimony will neither be collected nor curated. If any such items are  
916 discovered in the course of the Undertaking, they shall be treated respectfully, in a  
917 culturally appropriate manner and in accordance with the Plan of Action for  
918 Discoveries included in the CHPMP.  
919

#### 920 **XIV. AMENDMENTS TO THE AGREEMENT**

921

922 Any Signatory or Invited Signatory to this PA may at any time propose amendments and  
923 distribute such written draft amendments to all other parties to this PA. Upon receipt of  
924 such draft amendments, all Signatories, Tribes, and Invited Signatories shall consult for  
925 no more than thirty (30) days to consider such amendments. Amendments to this PA shall  
926 take effect on the dates that they are fully executed by the Signatories.  
927

#### 928 **XV. DISPUTE RESOLUTION**

929

930 A. Should any Signatory or Invited Signatory to this PA object at any time to any actions  
931 proposed or the manner in which the terms of this PA are implemented, BLM shall  
932 consult with such party to resolve the objection. If BLM determines that such  
933 objection cannot be resolved, BLM will:  
934

935 1. Forward all documentation relevant to the dispute, including the BLM's proposed  
936 resolution, to the ACHP. The ACHP shall provide BLM with its advice on the  
937 resolution of the objection within thirty (30) days of receiving adequate  
938 documentation. Prior to reaching a final decision on the dispute, BLM shall  
939 prepare a written response that takes into account any timely advice or comments  
940 regarding the dispute from the ACHP, Signatories, and Invited Signatories and  
941 provide them with a copy of this written response. BLM will then proceed  
942 according to its final decision.  
943

944 2. If the ACHP does not provide its advice regarding the dispute within the thirty  
945 (30) day time period, BLM may make a final decision on the dispute and proceed  
946 accordingly. Prior to reaching such a final decision, BLM shall prepare a written  
947 response that takes into account any timely comments regarding the dispute from  
948 the Signatories and Invited Signatories to the PA and provide them and the ACHP  
949 with a copy of such written response.  
950

951 B. BLM's responsibilities to carry out all other actions subject to the terms of this PA  
952 that are not the subject of the dispute remain unchanged.  
953

- 954 C. At any time during implementation of this PA, should an objection pertaining to this  
955 PA be raised by a Tribe or a member of the public, BLM shall immediately notify all  
956 Signatories and Invited Signatories of the objection, consult with all Signatories and  
957 Invited Signatories concerning the objection, and take their views into account in  
958 reaching a final decision. The BLM retains the authority to make the final decision  
959 resolving the objection. The BLM will provide its final decision to the objecting party  
960 and all Signatories and Invited Signatories within fifteen (15) days of reaching a  
961 decision.  
962
- 963 D. Any dispute pertaining to the NRHP eligibility of historic properties or cultural  
964 resources covered by this PA will be addressed by the BLM per 36 CFR §800.4(c)(2)  
965 in a manner consistent with the principles outlined in the PA.  
966

## 967 XVI. TERMINATION

968

- 969 A. If any Signatory to this PA determines that its terms will not or cannot be carried out,  
970 that party shall immediately consult with the other Signatories and Invited Signatories  
971 to attempt to develop an amendment per Stipulation XIV. If within thirty (30) days  
972 from commencement of consultation, an amendment cannot be agreed upon, any  
973 Signatory may terminate the PA upon written notification to the other Signatories and  
974 Invited Signatories.  
975
- 976 B. If this PA is terminated, and prior to work continuing on the undertaking, BLM must  
977 either (a) execute an agreement document pursuant to 36 CFR §800.6 or (b) request,  
978 take into account, and respond to the comments of the ACHP under 36 CFR §800.7.  
979 BLM shall notify the Signatories and Invited Signatories as to the course of action it  
980 will pursue.  
981
- 982 C. The Signatories have the sole authority to terminate this PA. An Invited Signatory  
983 may propose termination but cannot terminate this PA. However, prior to proposing  
984 termination, any Signatory or Invited Signatory who has proposed termination must  
985 first attempt to amend the PA pursuant to Stipulation XIV.  
986
- 987 D. In the event of termination of this PA, the BLM shall at all times ensure that until and  
988 unless a new agreement is executed for the actions covered by this PA, all  
989 Undertakings formally addressed in the terminated PA shall be reviewed individually  
990 in accordance with 36 CFR §800.4-800.6.  
991

## 992 XVII. ANNUAL REPORT AND EVALUATION

993

- 994 A. The implementation and operation of this PA shall be evaluated on an annual basis by  
995 the Signatories, Tribes, and Invited Signatories. This evaluation may include in-  
996 person meetings between BLM and the Signatories, Tribes, and Invited Signatories  
997 and review for possible modifications or amendments.  
998
- 999 B. BLM shall prepare and submit reports by December 1<sup>st</sup> of annual cultural resource  
1000 activities to all Signatories, Tribes, and Invited Signatories for each of the first five

(5) years after the implementation of this PA and every second year after that for the duration of this PA. Signatories and Invited Signatories may provide comments on annual reports to BLM within thirty (30) business days of receipt. BLM will collate and distribute comments to all Signatories and Invited Signatories, revise the report, as necessary, and explain why particular revisions were or were not made. If there are significant revisions needed, and if the Signatories agree in writing, a meeting may be held to discuss any needed revisions.

## **XVIII. APPENDICES**

This PA includes nine Appendices (Appendices A - I) whose terms shall be construed in a manner consistent with the terms of this PA. In the event of a conflict between the terms of this PA and the terms of any Appendix the terms of this PA shall control.

## **XIX. DURATION OF THIS AGREEMENT**

- A. Unless the PA is terminated pursuant to Stipulation XVI, another agreement executed for the Undertaking explicitly supersedes it, or the Undertaking itself, including remediation of the site, has been completed, this PA will remain in full force and effect for thirty (30) years from the original date of execution.
- B. The BLM will notify the other Signatories and Invited Signatories to the PA when the PA is terminated or ceases to be in full force and effect. The Signatories may extend the duration of the PA through the execution of an amendment per Stipulation XIV prior to its termination or lapse. This PA shall be reviewed every five (5) years to assess the need for modification or amendment.

## **XX. EFFECTIVE DATE**

This PA shall take effect on the date that it has been fully executed by the Signatories. Any amendments or attachments to this PA shall take effect on the dates they are fully executed by the Signatories, or such other self-executing dates as may be described in those documents.

Execution and implementation of this PA is evidence that BLM has afforded the ACHP a reasonable opportunity to comment on the Undertaking and its effects on cultural and historic properties and has complied with Section 106 of the NHPA. The Signatories to this PA represent that they have the authority to sign for and bind the entities on behalf of whom they sign.



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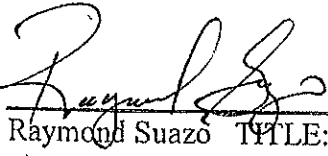
**XXI. SIGNATORY AND INVITED SIGNATORY PARTIES**

Separate pages to follow for each party

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A. Signatory Party

U.S. BUREAU OF LAND MANAGEMENT

By:   
Raymond Suazo TITLE: State Director

Date: 4/18/2017

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1111 B. Signatory Party

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1113 ADVISORY COUNCIL ON HISTORIC PRESERVATION  
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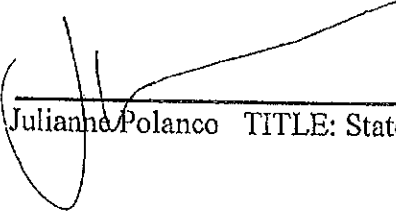
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1118 By: John M. Fowler  
1119 John M. Fowler TITLE: Executive Director

Date: 6/1/17

C. Topock PA Amendment Signatory Party

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By:

 TITLE: State Historic Preservation Officer

Date:

3 May 2017

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D. Signatory Party

ARIZONA STATE HISTORIC PRESERVATION OFFICER

By: Kathryn Leonard Date: 3/28/17  
Kathryn Leonard TITLE: State Historic Preservation Officer

**E. Invited Signatory Party**

**CHEMEHUEVI INDIAN TRIBE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Honorable Charles Wood TITLE: Chairman

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**F. Invited Signatory Party**

**COCOPAH INDIAN TRIBE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Honorable Sherry Cordova TITLE: Chairwoman

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**G. Invited Signatory Party**

**COLORADO RIVER INDIAN TRIBES**

By: \_\_\_\_\_  
Honorable Dennis Patch    TITLE:    Chairman

Date: \_\_\_\_\_



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**H. Invited Signatory Party**

**FORT MOJAVE INDIAN TRIBE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Honorable Timothy Williams TITLE: Chairman

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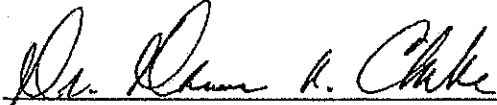
**I. Invited Signatory Party**  
**FORT YUMA QUECHAN TRIBE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Honorable Keeny Escalanti, Sr. TITLE: President

J. Invited Signatory Party

HUALAPAI TRIBE

By:



Honorable Dr. Damon Clarke

TITLE:

Chairman

Date:

03/14/2017

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1534 K. Invited Signatory Party

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1536 HAVASUPAI TRIBE

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1541 By: \_\_\_\_\_ Date: \_\_\_\_\_

1542 Honorable Don E. Watahomigie TITLE: Chairman

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**L. Invited Signatory Party**

**TWENTY-NINE PALMS BAND OF MISSION INDIANS**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Honorable Darrell Mike                      TITLE: President

M. Invited Signatory Party

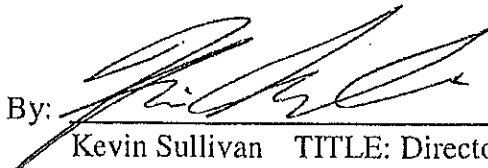
YAVAPAI-PRESCOTT INDIAN TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Honorable Earnest Jones, Sr. TITLE: President

N. Invited Signatory Party

PACIFIC GAS AND ELECTRIC COMPANY

By:



Kevin Sullivan TITLE: Director, Environmental Remediation

Date:

3/30/17

**O. Invited Signatory Party**

**U.S. BUREAU OF RECLAMATION**

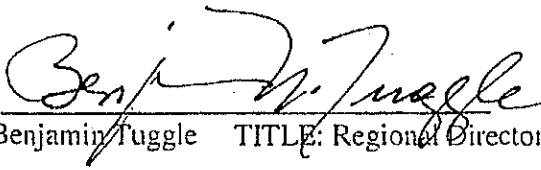
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Marc Maynard TITLE: Director, Resource Management Office



P. Invited Signatory Party

U.S. FISH & WILDLIFE SERVICE

By:



Date:

4/20/2017

Dr. Benjamin Tuggle TITLE: Regional Director, Southwest Region

**APPENDICES**

- A. **Area of Potential Effect (APE)** for the Groundwater Remediation Phase of the Topock Remediation Project (no change)
- B. **Consultation Protocol** (amended)
- C. **Monitoring Protocol** (amended)
- D. **Archaeological and Historical Resources within the APE of the Topock IM No. 3 Project** (no change)
- E. **Acronyms and Abbreviations** (no change)
- F. **References, Laws, and Regulations Cited** (no change)
- G. **Glossary** (no change)
- H. **Cultural Resources Management Plan Material Associated with Interim Measure 3 (IM-3) of the Topock Remediation Project (March 2008).** (archaeological and historical site location information redacted) (no change)
- I. **2016. Cultural Historical Properties Management Plan (CHPMP) ( 2012).**

**APPENDIX B**  
**Amendment 1**

**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, statutes, 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.

**2016.** The Hualapai Tribe was the only one of nine consulting tribes that signed as an invited Signatory to the 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.

**2016.** The CHPMP replaced the CRMP in 2012.

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.

**2016.** BLM shall meet with Signatories, Tribes, and Invited Signatories on an annual basis, at a time and place agreeable to the majority of participants.

- 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.

**2016.** In addition to annual consultation provided for above, agency managers will consult with Tribal Chairpersons when requested by Tribes or deemed necessary by Federal Agencies.

- 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.

**2016.** Upon the election of a new Tribal Chairperson or the designation of a new BLM Field Office Manager, the relevant Tribal Chairperson(s) and Field Office Manager will endeavor to meet, at the request of either party, to review this agreement and ensure continuity in its implementation.

- 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.

**2016.** Staff level consultations between the BLM and Tribes may occur as needed and determined necessary. 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, and other Tribal staff who may be concerned, such as law enforcement officials and 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.

**2016.** Tribal officials and the BLM management 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.



**APPENDIX C**  
**Amendment 1**

**TOPOCK REMEDIATION PROJECT PROGRAMMATIC AGREEMENT TRIBAL  
AND ARCHAEOLOGICAL MONITORING PROTOCOL**

The intent of this Monitoring Protocol is to provide best practices and guidance for monitoring activities for work conducted in, and areas related to, remedial actions conducted by Pacific Gas & Electric Company (PG&E or the Company) in the Topock Remediation Project Area.

This protocol provides guidance for monitoring activities specifically related to the Topock Remediation Project Undertaking. This protocol outlines procedures for use by Archaeological and Tribal Monitors in identifying and/or evaluating effects to previously recorded or newly discovered cultural and historic resources during ground-disturbing activities associated with the Undertaking. Monitoring provides a means of preventing potentially unanticipated adverse effects to cultural and/or historic resources.

Working with Tribal Cultural Monitors (hereafter referred to as Tribal Monitors) and Tribal community members requires awareness of, and sensitivity to, Tribal cultures, customs, traditions, and histories. This protocol provides a set of guidelines that facilitates a collaborative partnership between Tribes and the Department of the Interior (DOI), the Bureau of Land Management (BLM), and PG&E throughout the Topock Remediation Project (Undertaking).

Cultural sensitivity training will be required of all staff, workers, and contractors engaged in activities in the Topock Remediation Project Area of Potential Effect (APE) to familiarize them with the sacred nature of the area so that they will perform their jobs in a respectful manner. This training will also be given to new personnel before they are allowed to do fieldwork within the APE. This training will be conducted by PG&E with participation by Tribes and Tribal Monitors, Archaeological Monitors, Federal Agency staff, and PG&E supervising staff, as appropriate. Consistent with PG&E's stated policy, PG&E will not tolerate any disrespectful behavior in the field and will remove any staff, workers, or contractors who do not comply with this section.

This Protocol specifies ways in which the Tribes, BLM, and PG&E may ensure that:

1. Tribes, BLM, and PG&E, each are kept well informed of Undertaking activities and outcomes;
2. Tribal and Archaeological Monitors have the opportunity to alert PG&E's site supervisor (or designee) to potentially sensitive areas or issues that Monitors may be aware of or may become aware of while fieldwork is in progress;
3. PG&E's site supervisor (or designee) notifies BLM of potentially complicated situations. These situations may include discovery of a new cultural or historical resource, damage to a previously recorded cultural or historical resource, or unanticipated effects identified;
4. Tribal concerns regarding work activities are addressed while fieldwork is in progress.

Nothing in this Protocol shall be taken to substitute or supersede BLM's performance of its responsibilities under other Federal laws and policies including NHPA Sections 106 and 110, the American Indian Religious Freedom Act, the Religious Freedom and Restoration Act or for compliance with the terms of the PA.

## **MONITOR QUALIFICATIONS**

### **Qualified Tribal Monitors:**

1. Shall be appointed by the Tribe to represent Tribal interests;
2. Shall have the training the Tribe deems necessary;
3. Must be physically capable of doing the required work.

### **Qualified Archaeological Monitors:**

1. Must meet Secretary of the Interior professional qualification standards as indicated in PA Stipulation XI A.;
2. Must be physically capable of doing required work;
3. Must be able to work with Tribal Monitors and assist, where appropriate, in communicating the recommendations of such Monitors;
4. Will have standard field monitoring tools of the profession available onsite (including but not limited to GPS, camera, brush, trowel, notebook, etc).

## **WORK SCHEDULE**

The Signatories and Invited Signatories to the PA understand that not all activities at the Topock Compressor Station site are undertaken as a part of the Topock Remediation Project, nor do all activities require the services of Tribal and Archaeological Monitors. Tribal and Archaeological Monitors will be provided with anticipated schedules for Topock Remediation Project work that requires monitoring as early as possible but at least three (3) business days in advance of the initiation of the identified project work, whenever possible. Recognizing that changes to the work schedule may be inevitable, any change in the work schedule will be provided to the Tribal and Archaeological Monitors as soon as possible after the change becomes part of the work schedule. If there is a question regarding need for a monitor, the questioning party shall consult the BLM Project or Field Manager who will make the final determination of need.

## **MONITORING DUTIES AND RESPONSIBILITIES**

Prior to execution of the PA for the Undertaking, PG&E sometimes invited the Tribes to be present on site during construction to monitor and observe non-maintenance grading, trenching, or other excavation for any facilities, new roads, or other project components related to the Undertaking which may have had the potential to adversely impact cultural and historic resources. The Tribal and Archaeological Monitors shall both be invited to monitor such field work.

PG&E has found that the participation of Tribal Monitors is beneficial to both the Company and to the Tribes with whom the Company works. Tribal Monitors are encouraged to provide recommendations to the PG&E site supervisor (or designee), but may not direct or supervise work activities. Any concerns or recommendations Tribal Monitors may have during work activities are to be directed to the PG&E's site supervisor (or designee), BLM Field Manager, and the Tribes. The Tribal Monitor shall document any such recommendations and concerns as well as the extent to which the recommendations were implemented.

The duties of Tribal Monitors include, but are not limited to:

1. Being on site during construction to monitor and observe grading, trenching, or other excavation for any facilities, roads, or other project components related to the Undertaking which may have the potential to adversely impact cultural and historic properties.
2. Alerting the Archaeological Monitor, designated PG&E site supervisor, and/or PG&E's onsite project manager (or designee) as to potentially sensitive areas or issues that the Tribal Monitor may be aware of or may become aware of during fieldwork. The designated site supervisor and/or onsite project manager (or designee) must then contact BLM's Topock Project Manager or Field Manager and provide notice of discovery or damage. Any issues regarding sensitive areas are to be resolved as specified in the Dispute Resolution clause on page 5.
3. Identifying and understanding the types of impacts with comparisons to baseline data and previous monitoring data while in the field.
4. Through observation, being aware of the magnitude and probability of further impacts.
5. Effectively communicating impacts affecting traditional resources, including but not limited to, cultural features in and of the landscape.
6. Being prepared to interpret impacts that reflect ecological, economic, political, and socio-cultural consequences to Tribal norms, values, and beliefs while in the field.
7. Ensuring that the Tribe(s) Monitor representative is regularly updated on project progress and is aware of any issues that may arise.
8. Consulting with other Tribal experts and/or the Tribal Council before making recommendations, as appropriate.
9. When cultural items are found, the Tribal Monitor will be consulted to determine if discovered artifacts are items of cultural patrimony or may have had other traditional ceremonial or cultural uses.
10. Tribal Monitors may consult other Tribal experts and/or their Tribal Council before making recommendations. Final recommendations shall be offered within fifteen (15) days of the discovery and identification of objects specified in 9.

The duties of Archaeological Monitors include, but are not limited to:

1. Determining what types of cultural and historic resources have been previously recorded in or near areas in which work is being monitored.
2. Understanding how the CHPMP and its contents apply to discovery or damage situations prior to fieldwork.
3. Being on site during construction to monitor and observe grading, trenching, or other excavation for any facilities, roads, or other project components related to the Undertaking which may have the potential to adversely impact cultural and historic properties.
4. Alerting the Tribal Monitor, designated PG&E site supervisor, and/or PG&E's onsite project manager (or designee) as to potentially sensitive areas or issues that the Archaeological Monitor may be aware of or may become aware of during fieldwork. The designated site supervisor and/or project manager must then contact BLM's Topock Project Manager or Field Manager and provide notice of discovery or damage. Any issues regarding sensitive areas are to be resolved as specified in the Dispute Resolution clause on page 5.
5. Through observation, being aware of the magnitude and probability of further impacts.
6. Being able, during fieldwork, to identify measures which would avoid further adverse effects to cultural and historic properties.
7. Ensure that PG&E, the BLM, and Tribes are aware of any issues that may arise.

## **DISCOVERIES**

If the Undertaking will affect previously unidentified resources, or affect a previously recorded cultural or historical resource in a way not previously anticipated, or have greater or different effects than previously anticipated, all work having potential for adverse effect shall cease within a fifty (50)-meter radius (or a smaller or larger area if determined appropriate by the BLM, the Monitors, and PG&E in the field) of the point of discovery. The Archaeological and Tribal Monitors will work with BLM and PG&E to ensure that the PA requirements of Stipulation VII (CHPMP) and Stipulation IX (Discoveries) are met.

**2016.** The archaeological and tribal monitors will comply with the PA requirements of Stipulation IX (Discoveries). Protocols to be followed are found in the Discovery Plan (Appendix C of the CHPMP).

## **HUMAN REMAINS**

If the Undertaking affects previously unidentified human remains and/or associated funerary objects or graves, or affects such resources in a way not previously anticipated, or has greater adverse effect than previously anticipated, all work in the vicinity of the discovery shall cease. No further action will be taken until the BLM, in consultation with Tribal and Archaeological Monitors and PG&E in the field, has determined the nature of the discovery and delineated an area not to exceed fifty (50) meters from the approximate center point of the discovery (or a smaller or larger area if warranted) in which no further work is to take place until treatment of the discovery is resolved.

At such point BLM will notify all Signatories, Tribes, and Invited Signatories of the nature and general location of the discovery. The BLM will implement appropriate measures, including stabilization or covering, to protect any discovery (human remains, funerary objects, sacred objects, or objects of cultural patrimony) from further disturbance in accordance with the principles set forth in Stipulation I. Ongoing work not within fifty (50) meters (or a smaller area if determined appropriate by parties in the field) of the discovery may continue. If human remains and/or associated funerary objects compose all or part of the discovery, then BLM shall ensure the stipulations of the Plan of Action included in the CHPMP, as described in Stipulation VII (H), will be completed. Also, if human remains and/or funerary objects are encountered, all activities shall follow the procedures and direction provided in NAGPRA and California Public Resources Code sections 5097.98 and 5097.991. For Arizona, such activities shall follow the procedures and direction provided in NAGPRA and applicable state laws, including the Arizona Antiquities Act of 1927 (ARS §41-841 to 41-846), Burial Protection Law of 1990 (ARS §41-865), and ARS §41-844 of 1990.

The Plan of Action (CHPMP Appendix D) should be followed in the event that human remains or associated funerary objects are identified.

## **MONITORING AND REPORTING REQUIREMENTS**

Monitors shall check-in and out with the designated site supervisor and/or PG&E's site manager (or designee) each day. Each monitor shall complete a Daily Monitoring Log detailing monitoring

activities. This log will provide the Tribe, BLM, and PG&E with details on the activities that took place during each day, any concerns or issues, and how those concerns or issues were resolved.

The Daily Monitoring Log must be completed and signed by the monitor and the designated site supervisor and/or PG&E's onsite project manager (or designee), both, at the end of each day. PG&E will also provide copies of the Daily Monitoring Log to the BLM Topock Project Manager. This Log will provide details on the activities that took place during each day, any concerns or issues, and how those concerns or issues were resolved. In the event that the designated site supervisor and/or PG&E's onsite project manager is not available to sign the log at the end of the day, the monitor will acquire their signature(s) the next time they meet. The Daily Monitoring Log will be the property of PG&E; and the company shall fax or email a copy to the Tribe, upon request. The Tribal and Archaeological Monitors may also maintain additional monitoring notes and photos, which will be the property of the Tribes and BLM, respectively.

**2016.** Tribal Monitors will sign in with PG&E's designated site supervisor or onsite project manager (or designee) at the beginning of each work day or upon arrival. PG&E will maintain logs reflecting the names and tribal affiliation of all monitors who report to work. The use of Daily Monitoring Logs by Tribal Monitors is encouraged although each tribe is responsible for establishing reporting requirements for its monitors. All Daily Monitoring Logs submitted to PG&E shall be retained.

## **SAFETY**

Tribal and Archaeological Monitors will be required to meet with PG&E's site supervisor prior to initiating monitoring activity and will be required to obtain any applicable training required under 29 CFR 1910.120 and 40 CFR 300.150. The PG&E site supervisor will identify the safety and logistical guidelines that are appropriate for the monitoring activity. Tribal and Archaeological Monitors are invited to attend the safety meetings at the start of each workday or new work task. If the Monitors do not attend this meeting, they will be instructed about the safety concerns of the day by a PG&E representative. Tribal and Archaeological Monitors will be expected to wear all personal protective equipment specified by PG&E's site supervisor and required of other similarly situated field workers. Tribal and Archaeological Monitors will be expected to actively participate to enhance the safety of themselves and the other workers onsite by communicating with PG&E's site supervisor if any safety concerns are identified. Due to safety considerations at the Project site, Tribal and Archaeological Monitors will also be prohibited from conducting any monitoring within designated construction exclusion zones, unless otherwise authorized by PG&E. Such zones are to be clearly delineated to the Tribal and Archaeological Monitors by PG&E's site supervisor. In these situations, other efforts to provide alternative methods for accommodating Monitors including, but not limited to, high-powered binoculars, spotting scopes, or other vision enhancement tools or alternative viewing platforms will occur.

## **DISPUTE RESOLUTION**

PG&E's site supervisor (or designee) shall take into consideration all Tribal and Archaeological Monitor recommendations, subject to final approval by BLM in the event of a dispute. The Tribal and Archaeological Monitor's recommendations and the extent of their implementation will be detailed in the Tribal and Archaeological Monitor's Daily Monitoring Log and also in the PG&E's

site supervisor's daily notes. If the Tribal and Archaeological Monitors' recommendations relate to either the discovery of human remains or other cultural or historical material, the Tribal and Archaeological Monitors have the responsibility to notify PG&E's site supervisor (or designee), who must then follow procedures specified in the PA Stipulation IX Discoveries. If the Tribes, PG&E, and BLM can resolve treatment of the discovery in a manner that does not cause adverse effects to significant cultural and historic properties and follows the procedures outlined in PA Stipulation IX B, the activities may proceed. Any concerns or disputes that cannot be resolved in the field will be directed to BLM for consideration and appropriate action under PA Stipulation XV, Dispute Resolution. The Tribal and Archaeological Monitors, PG&E, and BLM will use their best efforts to resolve any dispute as quickly as possible.

**2016.** If human remains or funerary items are discovered, PG&E's onsite supervisor (or designee) must follow procedures outlined in the Plan of Action (Appendix D of the CHPMP).

## **COMPLIANCE AND MONITORING GUIDELINES**

It is the Tribal and Archaeological Monitors' responsibility to comply with all the monitoring guidance provided in this Protocol. If the monitor is unable to do so, the designated field supervisor and/or PG&E's onsite project manager (or designee) will contact PG&E's Cultural Resources Specialist who will consult with BLM and the Tribe regarding the situation.

## **ADMINISTRATION**

The Signatories and Invited Signatories to the PA agree to designate a contact person in writing to assist in implementing these guidelines within thirty (30) calendar days of execution of the PA. This contact person may be the same as called for as a Point of Contact (POC) in Appendix B of this PA. Any future changes to contact person or contact information for PG&E, BLM, and the Tribes shall be communicated in writing within ten (10) calendar days of any such change.