PROGRAMMATIC AGREEMENT

AMONG
U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, ARIZONA STATE HISTORIC PRESERVATION OFFICER, ARIZONA STATE LAND DEPARTMENT, BUREAU OF INDIAN AFFAIRS, BUREAU OF LAND MANAGEMENT, BUREAU OF RECLAMATION, NATIONAL PARK SERVICE, UNITED STATES FOREST SERVICE, YUMA PROVING GROUND, AK-CHIN INDIAN COMMUNITY, COLORADO RIVER INDIAN TRIBES, FORT MOJAVE INDIAN TRIBE, FORT YUMA-QUECHAN TRIBE, GILA RIVER INDIAN COMMUNITY, HUALAPAI TRIBE, NAVAJO NATION, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, AND TOHONO O'ODHAM NATION

REGARDING
MAINTENANCE AND MINOR CONSTRUCTION ACTIVITIES AT EXISTING WESTERN TRANSMISSION LINES, FACILITIES AND PROPERTIES IN ARIZONA

WHEREAS, the United States Department of Energy, Western Area Power Administration (Western) operates and maintains, through its Desert Southwest Regional Office (DSW) and Rocky Mountain Regional Office (RMR), an extensive electrical power delivery system throughout the state of Arizona (AZ), which includes transmission lines, substations, communication sites and ancillary features; and

WHEREAS, Western's electrical power delivery system requires regular maintenance and minor construction for safety and delivery of electricity; and

WHEREAS, Western conducts routine and emergency maintenance and minor construction activities (maintenance program) in order to maintain the reliability of the electrical system; thereby making these activities "undertakings" subject to the provisions of Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 CFR Part 800; and

WHEREAS, Western is the lead agency for compliance with Section 106 of the NHPA on all Western's maintenance program activities as these activities have the potential to affect historic properties on private, state, federal, or tribal lands; and

WHEREAS, Western's electrical delivery system crosses private, state, state trust, federal and tribal lands, and Western consulted with the AZ State Land Department, Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, United States Forest Service, and Yuma Proving Ground and invited these agencies to participate as Invited Signatories to this programmatic agreement (PA); and

WHEREAS, this PA concerns Western's electrical delivery system that crosses lands of the following federally-recognized tribes: the Ak-Chin Indian Community, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Gila River Indian Community, Hualapai Tribe, Navajo Nation, Quechan Tribe, Salt River Pima-Maricopa Indian Community, and Tohono O'odham Nation, and Western consulted with these tribes and respective Tribal Historic Preservation Officers (THPOs) regarding the development of this PA, and invited these Tribes to participate as Invited Signatories; and

WHEREAS, Western also consulted with other federally-recognized tribes (all tribes consulted are collectively referred to as Tribes) that may attach religious or cultural significance to properties throughout AZ that may be affected by Western's maintenance program: Cocopah Indian Tribe, Chemehuevi Indian Tribe, Fort McDowell Yavapai Nation, Havasupai Tribe, Hopi Tribe, Kaibab Band of Paiutes, Las Vegas Tribe of Paiute, Moapa Band of Paiute, Pascua Yaqui Tribe, Pueblo of Zuni, San Carlos Apache Tribe, San Juan Southern Paiute Tribe, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, and the Yavapai-Prescott Indian Tribe to participate in the development of this PA, and invited these Tribes to sign as Concurring Parties to this PA; and

WHEREAS, the Arizona State Museum (ASM) has been invited to participate as a Consulting Party pursuant to 36 CFR 800.3(f), as it has defined authorities and responsibilities under Title 41, Chapter 4.1 Article 4 Arizona Revised Statute [A.R.S.] Section 41-841 et. Seq. that apply to state, county, city, and other municipal lands in Arizona, and invited to sign as a Concurring Party; and

WHEREAS, Western sought public input through public outreach and comments were considered and incorporated in this PA; and

WHEREAS, Western also consulted with the Advisory Council on Historic Preservation (ACHP) and the AZ State Historic Preservation Officer (SHPO) on this PA pursuant to regulation (36 CFR Part 800), and both are participating as Signatories; and

WHEREAS, this PA supersedes the previous PA signed in 1996, titled *Programmatic Agreement Among Western Area Power Administration, the Advisory Council On Historic Preservation, and the Arizona State Historic Preservation Officer, Concerning Routine Maintenance Activities at Western Facilities*; and

WHEREAS, the definitions in Appendix A are applicable to this PA;

NOW, THEREFORE, Western, the SHPO, THPOs for the Gila River Indian Community, Hualapai Tribe, Navajo Nation, and Tohono O'odham Nation, and the ACHP and other participating Invited Signatories agree that Western's maintenance program shall be implemented in accordance with the following stipulations in order to take into account the effects of the maintenance program activities on historic properties.

STIPULATIONS

Western, as the lead federal agency for all Western's maintenance program activities, shall ensure that the following measures are carried out:

I. COORDINATION OF ACTIVITIES REQUIRING REVIEW THAT OCCUR ON FEDERAL, STATE AND TRIBAL RESERVATION LANDS

For all planned maintenance program activities requiring review (see Stipulation III.B) under this PA that occur on state, federal and tribal lands, Western ensures that:

A. Western's environmental staff (Environmental Manager, Regional Preservation Official (RPO) or Federal Preservation Officer (FPO)) will notify the state or federal agency(ies) or Tribe(s), as appropriate, within 10 calendar days from the initiation of Western's environmental review of the project.

B. Western will provide the state or federal agency(ies) and Tribe(s), as appropriate, with draft copies of all new inventory reports, tribal consultation documentation (as appropriate), and all similar documentation relating to the identification and treatment of historic properties, and seek their comment per Stipulation IV.B.

C. Western will provide the federal agency(ies) and Tribe(s), as appropriate, with digital and hard copies of Final inventory reports, and associated Geographic Information Systems data, when available, and records, and copies of correspondence from the SHPO or THPO regarding NRHP eligibility determinations pursuant to Stipulation IV.B.

D. Western will consult with land-managing agencies, Tribes and the SHPO on National Register of Historic Places (NRHP) eligibility per Stipulation IV.C.

E. Western will consult with land-managing agencies, Tribes and the SHPO on findings of No Adverse Effects and Adverse Effects, pursuant to Stipulations V.A(1) and V.B, respectively.

F. All documentation provided to SHPO, agencies, THPOs, and Tribes for review concerning NRHP eligibility and project effect determinations will following the documentation standards outlined in 36 CFR § 800.11 to enable the reviewer to understand the basis for the findings and determinations.

II. WESTERN'S PROFESSIONAL QUALIFICATIONS, DOCUMENTATION STANDARDS, AND CULTURAL RESOURE AWARENESS TRAINING

A. Western's RPO and FPO are responsible for ensuring the implementation of this PA and will meet the Secretary of Interior's Professional Qualification Standards (36 CFR Part 61) in one or more fields in History, Archeology, Architectural History, Architecture, or Historic Architecture, as appropriate for activity/undertaking.

B. Western's RPO and FPO will ensure that its contractors obtain all appropriate permits for survey or monitoring on state, federal or tribal lands. Western will ensure that all field work conducted under contract shall be carried out or supervised by a person meeting the Secretary of Interior's Professional Qualification Standards appropriate to the resources. Work shall be conducted to the Secretary's documentation standards for identification and evaluation. In the event that ethnography is warranted, ethnographic work will be conducted by a qualified, cultural anthropologist (62 FR 33715). . Documentation standards include using the respective federal agency, THPO or the Arizona State Museum's documentation requirements and following "site/isolate" definitions, as appropriate.

C. Maintenance personnel will be required to receive cultural resource awareness and sensitivity training annually that is delivered by a qualified archaeologist at Western's Regional Office or in the field. Tribes may be invited to participate in the annual training. Maintenance personnel will also receive such training in the field, prior to projects that require archeological monitoring. New maintenance personnel assigned to such projects after the project has begun will receive awareness and sensitivity training on their first day in the field prior to starting work. Such training efforts will be documented and submitted to Western as part of monitoring reports.

III. UNDERTAKINGS

A. Appendix B is a list of maintenance program activities/undertakings exempt from further Section 106 review. **These activities/undertakings are determined by the Signatories and Invited Signatories to have little or no likelihood of affecting historic properties, should they be present**, and will be carried out by maintenance staff after environmental staff has completed its National Environmental Policy Act (NEPA) review and analysis.

B. **Appendix C** is a list of **non-exempt** maintenance program activities/undertakings that require review under Stipulation IV. Further, any maintenance program activity not listed in Appendices B or C requires Western's RPO or FPO to follow procedures outline in Stipulation IV, prior to the activity/undertaking.

IV. HISTORIC PROPERTY IDENTIFICATION AND EVALUATION

A. **Determine the APE:** As early as possible in the planning process, the RPO or FPO in consultation with the Region's Environmental Manager and maintenance staff will review non-exempt activities to define the APE within Western's right-of-way (ROW) or easement.

B. **Level of Effort:**

1. **Class I Inventory**: The RPO or FPO will conduct a Class I inventory of the proposed APE. Western's RPO, FPO or Western's contractor will contact or visit the land managing agency for current survey information. For activities/undertakings that occur within a tribe's reservation boundaries, Western will contact the tribe to find out about surveys and historic properties known within the proposed project area, as well as any other cultural resources or areas of concern that Western should consider with regard to the proposed activity/undertaking.

2. **Class II or III Survey**: Based on the results of the Class I inventory, the RPO or FPO will determine to what extent a Class II or III field survey of the APE within the ROW or easement is needed. Previously unsurveyed APEs will be inventoried at the Class III level for historic properties except in areas heavily disturbed (i.e. mechanically modified by cut or fill, severe erosion or within modern flood plains) or where dense vegetation prohibits survey (Appendix D, Best Management Practices). For areas >1 acre or >0.25 miles long that cannot be surveyed due to vegetation coverage, the RPO or FPO will consult with the land managing agency or tribe whose land the project is on to discuss monitoring, or post-activity survey or other options if the proposed project cannot be redesigned to avoid these areas. Survey reports will be provided to the land managing agency, SHPO, THPO and Tribes, as appropriate as Stipulated in I.B and C, and be provided a **30 calendar-day comment period**. Extensions to this timeframe may be requested by letter, email or telephone. For any Class II sample survey, Western will consult the SHPO/THPO, as appropriate and the land managing agency prior to conducting the survey.

3. **Tribal Consultation:** As part of Western's identification efforts, the RPO or FPO will consult interested Tribes that attach religious and cultural significance to properties within the APE. Tribes will be provided **30 calendar-days to respond.** Extensions to this timeframe may be requested by letter, email or telephone. Western may consult Tribes proactively (non-project specific) to determine the presence of places of traditional, religious and cultural importance that might be affected by non-exempt maintenance activities.

C. **Determinations of National Register of Historic Places Eligibility (NRHP):** Determinations of eligibility shall be made in consultation with the appropriate land managing agencies, SHPO, Tribes and THPOs, as appropriate. Pursuant to regulation (36 CFR 800.4(C)(1)), if Western and the SHPO/THPO do not agree, Western shall obtain a

determination of eligibility from the Secretary (Keeper of the National Register) pursuant to 36 CFR part 63. All cultural resources identified, including isolates, will be evaluated relative to all criteria of significance found at 36 CFR 60.4; however, when there is difficulty determining the eligibility of a cultural resource the RPO or FPO may assume it eligible. Agencies and Tribes agree to provide comments on NRHP eligibility within **30 calendar-days** of receipt of Western's request for comments. Extensions to this timeframe may be requested by letter, email or telephone. After consultation with the appropriate agencies and Tribes, the RPO or FPO shall consult with the SHPO or THPO regarding determinations of NRHP eligibility. Correspondence between Western and the SHPO or THPO will be provided to the appropriate land managing agencies, Tribes and THPOs, pursuant to Stipulation X.B.

V. PROJECT EFFECTS AND APPROVED CONDITIONS

A. Western utilizes a best management practice of avoiding or minimizing adverse effects to historic properties as defined in 36 CFR § 800.16(l)(1) whenever possible, and has established additional BMP practices that will be followed to minimize project effects to historic properties (Appendix D). For all non-exempt activities (see Appendix C), the RPO or FPO will review such activities per Stipulation IV and make findings of effects in accordance with the following:

1. A finding of **No Historic Property Affected** would result when no historic properties are present or when the APE or proposed activity is modified to avoid historic properties. A finding of **No Adverse Effect** would result when one or more historic property is within the APE, but efforts are made to minimize effects.

   Findings of No Adverse Effect will be made in consultation with land-managing agencies, Tribes, THPOs and the SHPO, except when the following conditions apply:

   a) the project area is determined by the RPO/FPO to have been surveyed to current Class III standards (see Stipulation IV), **and**

   b) historic properties within the APE will be avoided **or** impacts are limited to driving soft rubber-tired or tracked vehicles across a site on an existing access road, or crossing over a site while off-road within the ROW in soft rubber-tired ATVs during ground patrols when conditions are dry.

   The RPO or FPO will determine if the above conditions apply and are appropriate for the activity. The RPO or FPO is not required to consult with the land managing agency, SHPO/THPO or Tribe regarding findings of No Historic Property Affected or No Adverse Effect, when approved conditions apply. For all non-exempt activities (listed or not listed in Appendix C) where these approved conditions do not apply, the RPO or FPO

will consult with the land-managing agency, Tribes and SHPO/THPO regarding No Adverse Effect findings pursuant to 36 CFR 800.5(d)(1). Consulting parties will be provided **30 calendar-days to respond.** If no response, within the 30 calendar-day timeframe, Western may assume concurrence and move forward with the activity. Extensions to this timeframe may be requested by letter, email or telephone. The RPO or FPO will document findings of effect for all non-exempt activities, which will be reported annually pursuant to Stipulation X.

B. The RPO or FPO will make a finding of **Adverse Effect** when adverse effects to historic properties cannot be avoided or minimized. An adverse effect results when an undertaking alters any characteristic of a historic property that qualifies the property for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

C. Western's RPO or FPO shall consult with the AZ SHPO, the ACHP, THPOs, and land-managing agencies and Tribes (as appropriate) to resolve adverse effects pursuant to 36 CFR § 800.6 prior to commencing with the activity. Should Western decide not to pursue with the activity, all parties involved will be notified.

VI. DEVELOPMENT OF A PLAN FOR MONITORING AND DISCOVERIES

Western may use archaeological monitors and/or tribal cultural monitors during implementation of maintenance activities to ensure avoidance of historic properties and to make available personnel who could respond quickly to potential discovery situations. A plan for monitoring and treating discoveries will be developed in consultation with the Signatories and Invited Signatories, within six (6) months after the execution of this PA, and will be attached as Appendix E. The Signatories and Invited Signatories will have **30 calendar-days to review the draft plan** and provide comments to Western. Western will consider all comments and provide a final draft plan for review and comment 30 calendar-days after receipt of such comments. Signatories and Invited Signatories will have **15 calendar-days to provide additional comments on final draft plan** to Western. Western will consider any additional comments and provide the final plan to the Signatories and Invited Signatories no later than 30 calendar-days after receipt of the final comments. Should Western not meet the timeline for developing the plan, Western will consult with the SHPO, and appropriate land-managing agencies, appropriate Tribes and THPOs on monitoring plans and discoveries on a case-by-case basis, until such plan is developed.

VII. EMERGENCY CONTIGENCIES

Emergency activities are defined as hazardous materials spills or situations of unplanned or unscheduled power outages or imminent outages that potentially threaten human life and property. In the event of an emergency Western will comply with the following procedures:

- The Region's Maintenance Manager will submit a report to the Region's Environmental Manager concerning any emergency activity within 7 calendar-days of the occurrence,

- The Region's Environmental Manager, RPO or FPO will notify the affected land-managing agency or Tribe or THPO by telephone or email within 24 hours days of receipt of the Maintenance Manager's report.

- A summary of the emergency activity will be included in the annual report pursuant to Stipulation X.

- Western will conduct a Class I inventory of the emergency activity APE to determine if known historic properties exist within the APE. If no prior surveys occurred, a post emergency Class III survey will be conducted within 45 calendar-days of the report.

- If cultural resources are found as a result of the post-emergency survey the procedures under Stipulation VIII for Discoveries will be followed.

VIII. DISCOVERIES

A. If archaeological materials are discovered as a result of any maintenance activity, the discovery will be protected, all earth disturbing activities will cease within 30 meters (100 ft) of the discovery, and heavy equipment will be removed from the area until the discovery is assessed and documented. If the RPO or FPO determines that the discovery is an isolate and determines it is not eligible for NRHP listing, it will be documented and the activity will proceed with no further consultation. For all other discoveries, Western will either assume the materials eligible for NRHP listing pursuant to 36 CFR 800.13(c) or consult with the appropriate land-managing agency, Tribes, THPOs, and SHPO regarding eligibility, and will also consult if the discovery was, or will be, adversely affected by the activity. Western will notify the appropriate land-managing agency, SHPO, state agency and Tribes by phone within 48 hours of the discovery.

B. If human remains are discovered work will cease within 30 meters (100 ft) of the discovery. If remains are discovered on federal land, pursuant to 43 CFR 10, the regulations implementing the Native America Graves Protection and Repatriation Act (NAGPRA, 25 U.S.C. 30001 et seq). Western will notify the land managing agency followed by written notification within 24 hours of the discovery. If human remains are discovered on tribal lands, pursuant to 43 CFR 10 (NAGPRA), Western will notify the BIA and tribe followed by written notification within 24 hours of the discovery. Compliance with laws concerning discoveries of human remains on federal lands will be the responsibility of the federal land-managing agency. If human remains are found on state or private lands, Western will comply with state procedures: Discovery of Human Remains, Sacred Ceremonial Object, Object of National and Tribal Patrimony (Arizona Rev. Stat. Â§41-844). Details on these procedures will be outline in the monitoring and discovery plan referenced under Stipulation VI.

IX. EXECUTION AND DURATION

A. This PA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same PA. Western will distribute copies of all signed pages to the Signatories, Invited Signatories and Concurring Parties once the PA is executed in full.

B. This PA will expire ten (10) years from the date of its execution, unless the PA is amended with a new expiration date prior to such time. At such time, and prior to work continuing on any activity covered by this PA, Western shall either (a) execute a PA pursuant to 36 CFR § 800.14(b), or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7or (c) consult on undertakings pursuant to 36 CFR §§ 800.4 - 800.6. Prior to such time, Western may consult with the other Signatories and Invited Signatories to reconsider the terms of the PA and amend it in accordance with Stipulation XII below. Western shall notify the Signatories and Invited Signatories as to the course of action it will pursue.

X. PROGRAM MONITORING AND REPORTING

The RPO or FPO will meet annually with the SHPO or THPO and interested Signatories and Invited Signatories to discuss the implementation of PA and annual report. Western will provide a report to the SHPO and all Signatories detailing the non-exempt activities over the course of the prior calendar year by April 1 of each year, beginning in 2014. This report will include emergencies and discoveries. Western will prepare a table as part of the report listing the activities, dates, file searches, surveys, eligibility determinations, and any consultations with land-managing agencies and Tribes.

XI. DISPUTE RESOLUTION

Should any Signatory or Invited Signatory to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the RPO or FPO shall notify the SHPO about the objection by email and consult with the objecting party to resolve the objection. If the RPO or FPO determines that such objection cannot be resolved, the FPO will forward the objection to the ACHP.

A. If the ACHP does not provide its advice regarding the dispute within 30 calendar-days, Western may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Western shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Invited Signatories to the PA, and provide them and the ACHP with a copy of such written response.

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

XII. AMENDMENTS

This PA may be amended in counterparts, when such an amendment is agreed to in writing by all Signatories and Invited Signatories. Western will distribute copies of the amendment to all Signatories, Invited Signatories and Concurring Parties. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

XIII. TERMINATION

If any Signatory or Invited Signatory to this PA determines that its terms will not or cannot be carried out, that Signatory or Invited Signatory shall immediately consult with the other Signatories/Invited Signatories to attempt to develop an amendment per Stipulation XII. If within thirty 30 calendar-days (or another time period agreed to by all Signatories/Invited Signatories) an amendment cannot be reached, any Signatory or Invited Signatory may terminate involvement in the PA upon written notification to the other Signatories and Invited Signatories. If the PA is terminated or if a Signatory or Invited Signatory terminates its involvement prior to work continuing on any undertaking that would be normally be covered by this PA or on that Signatory or Invited Signatory's land, Western must either:

A. follow the procedures outlined in 36 CFR §§ 800.4 - 800.6 for each undertaking, or
B. execute an new PA pursuant to 36 CFR § 800.14(b), or
C. request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. Western shall notify the Signatories/Invited Signatories as to the course of action it will pursue.

Execution and implementation of this PA evidences that Western has satisfied its Section 106 responsibilities for all individual undertakings associated with its maintenance program in Arizona, and afforded the ACHP the opportunity to comment.

SIGNATORIES

WESTERN AREA POWER ADMINISTRATION

By: _____ Date: 7/17/13
Darrick Moe, DSW Regional Manager, Department of Energy

WESTERN AREA POWER ADMINISTRATION

By: _____ Date: 8-2-13
Brad Warren, RMR Regional Manager, Department of Energy

ARIZONA STATE HISTORIC PRESERVATION OFFICER

By: James W. Garrison Date: 11/19/13
James W. Garrison, State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

for Valerie Hall Date: 12-12-13
John M. Fowler, Chief Executive Officer

INVITED SIGNATORY

ARIZONA STATE LANDS DEPARTMENT

By:_____ Date:_____
Vanessa P. Hickman, Land Commissioner