

**MEMORANDUM OF AGREEMENT
AMONG
U.S. DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION,
U.S. BUREAU OF RECLAMATION,
SAN CARLOS IRRIGATION PROJECT,
ARIZONA STATE LAND DEPARTMENT
AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
REBUILDING OF THE ED2-SGR #2 TRANSMISSION LINE**

WHEREAS, the United States Department of the Energy, Western Area Power Administration, Desert Southwest Regional Office (Western) proposes to rebuild the 115-kV transmission line between the existing Electrical District (ED) 2 and Saguaro No. 2 Substations (Proposed Action) pursuant to the Energy Reorganization Act (42 CFR § 7152(a)) and the Federal Power Act (16 U.S.C. § 824j); and

WHEREAS, the Proposed Action is located in Pinal County, Arizona, on land managed by the U.S. Bureau of Reclamation (Reclamation), U.S. Bureau of Indian Affairs (BIA), the Arizona State Land Department (ASLD), and private land near the City of Eloy and unincorporated Pinal County and consists of replacing wood “H-frame” structures with steel monopoles while retaining the current transmission line alignment; and

WHEREAS, Western determined that the Proposed Action constitutes a Federal undertaking, as defined in 36 CFR Part 800.16(y) (as revised in 2004) and Western, as the lead Federal agency for this undertaking, must therefore consider the effects of the undertaking on any historic property as required by regulation implementing Section 106 of the National Historic Preservation Act (NHPA) (*See* 54 U.S.C. § 306108); and

WHEREAS, Western defined the undertaking’s area of potential effects (APE) as a corridor consisting of 50 feet on either side of the transmission centerline within Western’s existing right-of-way (ROW), 50-foot-wide access road corridors, 400-foot external radii at 24 turning structures, and a 1,000-foot by 500-foot block near McClellan Wash (*See* Appendix A); and

WHEREAS, Western determined that the undertaking has the potential to cause adverse effects to historic properties [AZ AA:7:66(ASM), AZ AA:7:68(ASM), AZ AA:7:62(ASM), AZ AA:2:346(ASM), AZ AA:3:37(ASM), AZ AA:3:71(ASM), AZ AA:3:72(ASM), AZ AA:3:73(ASM), AZ AA:3:74(ASM), AZ AA:3:75(ASM), AZ AA:3:79(ASM), AZ AA:7:32(ASM), AZ AA:7:669(ASM), AZ AA:7:672(ASM), AZ AA:7:673(ASM), and AZ AA:7:674(ASM)], which are listed, or eligible for listing, in the National Register of Historic Places (NRHP), and has consulted with the Arizona State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the NHPA (54 U.S.C. § 306108); and

WHEREAS, Western consulted with the Gila River Indian Community, the Salt River Pima Maricopa Indian Community, the Ak Chin Indian Community, the Hopi Tribe of Arizona, and the Tohono O’odham Nation, for which the historic properties may have religious and cultural significance and invited these tribes to sign this Memorandum of Agreement (MOA) as concurring parties; and

WHEREAS, the San Carlos Apache Tribe deferred to the Four Southern Tribes (Salt River Pima-Maricopa, Gila River, Ak Chin, Tohono O’odham) early in the consultation process; and

WHEREAS, the Hopi Tribe of Arizona expressed a desire to continue consultation, but declined participation in the proposed MOA, deferring instead to the SHPO and other interested tribes; and

WHEREAS, because the BIA San Carlos Irrigation Project (SCIP) is responsible for issuing encroachment permits for the transmission line crossings of the Casa Grande Canal and the Florence-Casa Grande Extension Canal located south of the ED2 Substation, Western consulted SCIP about the effects of the undertaking on historic properties and invited the SCIP to sign this MOA as an invited signatory; and

WHEREAS, because Reclamation holds a 100 to 150-foot-wide easement for the transmission line that crosses the Arizona State Trust and private lands and is responsible for issuing an encroachment permit from the SCIP or acquiring new or expanded ROW, if required, Western consulted Reclamation about the effects of the undertaking on historic properties and invited Reclamation to sign this MOA as an invited signatory; and

WHEREAS, Western consulted the ASLD regarding the effects of the undertaking on historic properties and invited ASLD to sign this MOA as an invited signatory to this MOA; and

WHEREAS, because the Arizona State Museum’s (ASM) mandated responsibilities under A.R.S. §41-841 et seq., and the Arizona Antiquities Act (AAA), which applies to the portion of the undertaking on state land, as well as mandated responsibilities under A.R.S. §41-865, which applies to the portion of the project on private land, Western consulted the ASM about the effects of the undertaking on historic properties and invited them to sign this MOA as a concurring party; and

WHEREAS, the data recovery necessitated by the undertaking, located on ASLD land, will follow the AAA and Implementing Rules and the State Historic Preservation Act (A.R.S. §41-861 through §41-864); and

WHEREAS, ASM would develop an agreement regarding the treatment and disposition of Human Remains, Associated Funerary Objects, Sacred Ceremonial Objects, and Objects of National or Tribal Patrimony pursuant to Rules Implementing A.R.S. §41-844 and §41-865; and

WHEREAS, data recovery necessitated by the undertaking, located on ASLD land, must be permitted by ASM pursuant to A.R.S. §41-842; and

WHEREAS, the data recovery necessitated by the undertaking, located on Federal or private land, will be consistent with the Secretary of Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-44737); and

WHEREAS; Western performed public scoping concurrently with the National Environmental Policy Act process, pursuant to 36 CFR § 800.2(d)(1-3); and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), Western notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP informed Western on June 11, 2015 that it will not participate in the development of the MOA pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, Western, the SHPO, and invited signatories agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS

I. HISTORIC PROPERTIES TREATMENT PLAN

- A. Western shall develop and implement, in consultation with the Arizona SHPO and any interested Tribes, a Historic Properties Treatment Plan (HPTP) to avoid, reduce, or otherwise resolve adverse effects, if any, to historic properties within the APE before any ground disturbance occurs within the boundary of any historic property. The treatment plan shall emphasize avoidance, protection, and long-term monitoring of avoided historic properties; scientific data recovery from unavoidable historic properties; and, as applicable, other measures to reduce or mitigate adverse effects that cannot be avoided. Western will submit the HPTP to all parties to this MOA and provide them with an opportunity to review the plan for 30 calendar days. The HPTP will be consistent with the Secretary of Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-44737) and Rules Implementing the AAA.
- B. The HPTP will specify:
 1. The properties or portions of properties where data recovery is to be carried out, and will identify any property or portion of property that would be destroyed or altered without treatment, and a rationale for untreated portions;
 2. The results of previous research relevant to the undertaking and the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
 3. The field and laboratory analysis methods to be used, with an explanation of their relevance to the research questions;
 4. The methods to be used in data management and dissemination of data to the professional community and the public, including a proposed schedule for

- undertaking tasks, and a schedule for the submission of draft and final reports to consulting parties;
5. The proposed disposition and curation of recovered materials and records in accordance with the AAA and Implementing Rules and with CFR 79;
 6. Procedures for monitoring, evaluating, and treating discoveries of unexpected or newly identified properties during construction of the undertaking, including consultation with other parties;
 7. Procedures for monitoring, evaluating and mitigating any unexpected effects to historic properties during construction of the undertaking, including consultation with other parties;
 8. A Native American Graves Protection and Repatriation Act (NAGPRA) plan of action for the treatment of human remains, in the event that such remains are discovered, describing methods and procedures for the recovery, inventory, treatment, and disposition of Human Remains, Associated/Unassociated Funerary Objects, and Objects of Cultural Patrimony;
 9. A burial plan pursuant to Rules Implementing A.R.S. §41-844 and §41-865 describing methods and procedures for the recovery, inventory, treatment, and disposition of Human Remains, Funerary Objects, Sacred Ceremonial Objects, and Objects of National or Tribal Patrimony;
 10. A plan for suspension/termination of the Project that stipulates the procedures to be followed if the project is halted during data recovery for any reason;
 11. Preliminary Report of Findings preparation and review process, as well as proposed timelines;
 12. Data Recovery Report preparation and review process, as well as proposed timelines.

C. Review and Comment on the HPTP

1. Upon receipt of the draft HPTP, Western will review and subsequently submit such document concurrently to all consulting parties for review. All consulting parties will have 30 calendar days from receipt to review and provide comments to Western. All comments shall be in writing. Lack of response within this review period will be taken as concurrence with the HPTP.
 - i. Western will submit a comment matrix to all consulting parties within 14 days of receipt. Matrix will show responses received and Western's proposed changes to HPTP to address responses.
2. If revisions to the HPTP are made, all consulting parties have 30 calendar days from receipt to review the comments made by other consulting parties, review the revisions and provide comments to Western. Lack of response within this review period will be taken as concurrence with the revised HPTP.
3. Once consultation on the HPTP is complete, Western shall issue authorization to proceed with the implementation of the HPTP prior to construction, subject to obtaining the necessary permits.
4. Copies of the final HPTP will be provided to all consulting parties.

D. Review and Comment on Preliminary Report of Findings

1. Upon completion of fieldwork and prior to the initiation of construction, the institution, firm, or consultant responsible for the work will prepare and submit a brief Preliminary Report of Findings to Western.
2. Upon receipt of the draft Preliminary Report of Findings, Western will review and subsequently submit such document to all consulting parties for review. All consulting parties will have 30 calendar days from receipt to review the comments made by other consulting parties, review the revisions, and provide comments to Western. All comments shall be in writing. Lack of response within this review period will be taken as concurrence with the Preliminary Report of Findings.
 - i. Western will submit a comment matrix to all consulting parties within 14 days of receipt. Matrix will show responses received and Western's proposed changes to HPTP to address responses.
3. If revisions to the Preliminary Report of Findings are made, all consulting parties have 30 calendar days from receipt to review the revisions and provide comments to Western. Lack of response within this review period will be taken as concurrence with the revised Preliminary Report of Findings.

E. Review and Comment on Draft Data Recovery Report

1. Within twelve months of completion of data recovery, a draft Data Recovery Report will be prepared incorporating all appropriate data analyses and interpretations. Upon receipt of the draft Data Recovery Report, Western will review and subsequently submit such document concurrently to all consulting parties for review. All consulting parties will have 30 calendar days from receipt to review and provide comments to Western. All comments should be in writing. Lack of response within this review period will be taken as concurrence with the draft Data Recovery Report.
 - i. Western will submit a comment matrix to all consulting parties within 14 days of receipt. Matrix will show responses received and Western's proposed changes to HPTP to address responses.
2. If revisions to the draft Data Recovery Report are made, all consulting parties have 30 calendar days from receipt to review the revisions and provide comments in writing (via email or hard copy) to Western. Lack of response within this review period will be taken as concurrence with the revised draft Data Recovery Report.
3. Copies of the final Data Recovery Report will be provided to all consulting parties.

II. STANDARDS FOR MONITORING AND DATA RECOVERY

All historic preservation work carried out pursuant to this MOA shall be carried out by or under the supervision of a person, or persons, meeting at a minimum the Secretary of Interior's Professional Qualification Standards (48 FR 44738-44739) and the ASM permitting regulations.

III. CURATION

All materials and records resulting from the undertaking shall be curated as follows:

- A. Materials and records resulting from the undertaking conducted on Arizona State lands shall be curated in accordance with the AAA, Implementing Rules, and ASM curation policies
- B. Materials subject to repatriation under A.R.S. §41-844 and A.R.S. §41-865 shall be maintained in accordance with the burial agreement until they are repatriated.
- C. Materials and records resulting from the undertaking conducted on lands managed by Reclamation shall be curated at the Archaeological Research Institute (ARI).

IV. ADDITIONAL INVENTORY SURVEY

Western, in consultation with all parties to this MOA, shall ensure that new inventory surveys of additional ROW, temporary construction easements, and additional staging or use areas will include determinations of eligibility that are made in accordance with 36 CFR § 800.4 for all cultural resources. Western will submit draft survey reports to the SHPO after the land managing agency (if applicable) has reviewed and commented on the reports, and any changes (if appropriate) have been incorporated by Western. If Western and SHPO disagree on eligibility, Western shall request a formal determination from the Keeper of the NRHP.

V. DISCOVERIES

Western will ensure that the construction plans and specifications include the following mitigation measure: "If previously unidentified cultural resources are encountered during activities related to the construction of the undertaking, the contractor will stop work immediately at that location and will take all reasonable steps to secure the preservation of those resources. The on-site project inspector will call Western's Environmental Manager at 602-605-2524 or Western's Regional Preservation Officer at 602-605-2842 immediately, and make arrangements for proper treatment of those resources."

- A. If human remains or funerary items are discovered, Western will require construction to immediately cease within the area of discovery, take steps to secure and maintain preservation of the discovery, and notify the Director of ASM and the appropriate Indian Tribe(s) and land management agency to determine treatment and disposition measures pursuant to A.R.S. §41-844 and A.R.S. §41-865, in accordance with the previously executed burial agreement. ASM and Western shall ensure that the discovery is treated in accordance with the burial agreement. Western will also notify the SHPO of the discovery.
- B. If human remains are not involved, Western's Federal Preservation Officer or Regional Preservation Officer (or their designee) shall record the discovery and the appropriate land managing agency and SHPO shall be notified. The Director of ASM shall be notified if the discovery is on state land. Eligibility for inclusion on the NRHP will be determined in consultation with SHPO prior to mitigation or development of a new HPTP. Western shall then determine if the previously approved HPTP (according to Stipulation 1) is appropriate to the nature of the discovery. If appropriate, the HPTP shall

notify the consulting parties to this MOA and ensure that it is implemented. If the HPTP is not appropriate to the discovery Western will ensure that an alternate plan for the mitigation of adverse effect is developed and circulated to the consulting parties, who will have 48 hours to review and comment on the alternate plan. Western shall consider the resulting comments, and shall implement the alternate plan once an undertaking-specific permit has been issued.

- C. Unanticipated effects to historic properties shall be handled as outlined in the HPTP.

VI. DURATION

This MOA shall be null and void if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, Western may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation IX below.

VII. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, Western shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Western's efforts to carry out the terms of this MOA.

VIII. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, Western shall consult with such party to resolve the objection. If Western determines that such objection cannot be resolved,

Western will:

- A. Forward all documentation relevant to the dispute, including Western's proposed resolution, to the ACHP. The ACHP shall provide Western with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, Western shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. Western will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, 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 concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- C. Western's responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

IX. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories and invited signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

X. TERMINATION

If any signatory or invited signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories and invited signatories to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days an amendment cannot be reached, any signatory or invited signatory may terminate the MOA upon written notification to the other signatories and invited signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, Western must either (a) execute an MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. Western shall notify the signatories and invited signatories as to the course of action it will pursue.

Execution of this MOA by Western and the SHPO and implementation of its terms evidence that Western has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES

WESTERN AREA POWER ADMINISTRATION

By: Ronald E Moulton Date: 6/24/15
Ronald Moulton,
Senior Vice President and Desert Southwest Regional Manager

ARIZONA STATE HISTORIC PRESERVATION OFFICE

By: James W. Garrison Date: 7/31/15
James W. Garrison, State Historic Preservation Officer

INVITED SIGNATORIES

ARIZONA STATE LAND DEPARTMENT

COPY

By: *Lisa A. Atkins* Date:
Lisa. A. Atkins, Land Commissioner

BUREAU OF INDIAN AFFAIRS - SAN CARLOS IRRIGATION PROJECT

By: _____ Date:
Beau J. Goldstein, Acting Environmental Coordinator

By: F. S. Begay _____ Date: 7/1/2015
Ferris Begay, Project Manager

BUREAU OF INDIAN AFFAIRS – WESTERN REGION

By: Rodney M. Uy
for Bryan Bowker, Regional Director

Date: 7-1-15

BUREAU OF RECLAMATION

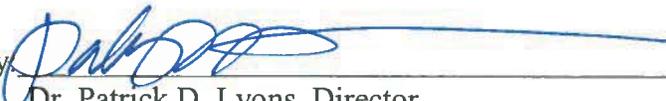
By: Leslie Meyers Date: 7/28/15
Leslie Meyers, Area Manager, Phoenix Area Office

CONCURRING PARTIES

AK CHIN INDIAN COMMUNITY

By: _____ Date:
Louis Manuel Jr., Chairperson

ARIZONA STATE MUSEUM

By  _____ Date: *30 June 15*
Dr. Patrick D. Lyons, Director

GILA RIVER INDIAN COMMUNITY

By: _____ Date:
Stephen R. Lewis, Governor

By: _____ Date:
Barnaby Lewis, THPO

THE HOPI TRIBE

By: _____ Date:
Herman G. Honanie, Chairman

By: _____ Date:
Leigh Kuwanwisiwma, Director, Cultural Preservation Office

SALT RIVER PIMA – MARICOPA INDIAN COMMUNITY

By: _____ Date:
Diane Enos, President

TOHONO O'ODHAM NATION

By: _____ Date:
Ned Norris, Chairman

By: _____ Date:
Peter Steere, THPO