

**Programmatic Agreement**

between

Office of Surface Mining Reclamation and Enforcement,

Bureau of Indian Affairs,

Bureau of Land Management,

U.S. Environmental Protection Agency,

National Park Service,

Navajo Nation Tribal Historic Preservation Officer,

Hopi Cultural Preservation Office,

Zia Pueblo,

Advisory Council on Historic Preservation,

New Mexico State Historic Preservation Officer,

Arizona State Historic Preservation Officer,

New Mexico State Land Office,

Arizona Public Service Company, and

Public Service Company of New Mexico

regarding

Management of Historic Properties Associated with the  
Four Corners Power Plant, Ancillary Facilities, and Transmission Lines

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## **RECITALS**

**WHEREAS**, Arizona Public Service Company (APS) and Navajo Transitional Energy Company, LLC (NTEC) are proponents of the Four Corners Power Plant and Navajo Mine Energy Project (the Project) whose purpose is to facilitate ongoing operations at the Four Corners Power Plant (FCPP) and on NTEC's Navajo Mine lease to provide for long-term, reliable, continuous, and uninterrupted base load electrical power to customers in the southwestern United States, using a reliable and readily available fuel source; and

**WHEREAS**, the Bureau of Indian Affairs (BIA) (Navajo Region Office and Western Region Office), Bureau of Land Management (BLM), U.S. Environmental Protection Agency (EPA), and National Park Service (NPS) have designated the Office of Surface Mining Reclamation and Enforcement (OSMRE) as the lead federal agency for purposes of compliance with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) in accordance with 36 Code of Federal Regulations (CFR) § 800.2(a)(2), until this Programmatic Agreement (the Agreement) is executed and then, if a Record of Decision (ROD) is issued, the BIA will become the lead federal agency for purposes of NHPA implementation; and

**WHEREAS**, NTEC is seeking a Surface Mining Control and Reclamation Act (SMCRA) permit for a new 5,600-acre permit area at Navajo Mine within its existing lease and is also seeking to renew its permit on the Navajo Mine in 2014 for up to 25 years in increments of 5-year permit renewals from OSMRE and to re-align Burnham Road; and

**WHEREAS**, OSMRE receives and considers applications for and renewals of SMCRA permits and has determined the issuance of a SMCRA permit for the Navajo Mine includes review under Section 106 of the NHPA (16 U.S. Code [USC] 470f, as amended) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800) and is therefore a Signatory to this Agreement; and

**WHEREAS**, APS operates the FCPP, which receives coal solely from the Navajo Mine, and executed a lease amendment with the Navajo Nation (Amendment and Supplement No. 3 to *Supplemental and Additional Indenture of Lease Between the Navajo Nation and Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company*) on March 7, 2011, which provides Navajo Nation consent to extend the term of the FCPP lease for an additional 25 years, beginning on July 7, 2016, until 2041, and also provides Navajo Nation consent to renew rights-of-way (ROWs) for both the plant site and certain transmission lines and related facilities until 2041; and

**WHEREAS**, APS has also received the consent of the Hopi Tribe to extend the term of the ROW for a Transmission Line across the Hopi Indian Reservation until 2041 and that Release

and Consent Agreement between the Hopi Tribe and APS became effective November 1, 2013; and

**WHEREAS**, Public Service Company of New Mexico (PNM) and the Navajo Nation have executed a ROW Extension/Renewal Agreement, which was approved by the Navajo Nation in October 2010 and expires April 7, 2030; and

**WHEREAS**, the Project requires federal approvals for portions of four Transmission Lines, including the Moenkopi switchyard and ancillary facilities (hereinafter “Transmission Lines”) (Attachment A) that are owned and operated by either APS or PNM and that interconnect with the FCPP and its ancillary facilities and transmit FCPP power and thus are part of the Undertaking:

- APS FCPP to Cholla 345-kilovolt (kV) Transmission Lines, terminating at the Navajo Indian Reservation southern boundary,
- APS FCPP to El Dorado 500-kV Transmission Line through and including Moenkopi and 14-mile segment from Moenkopi to the Navajo Indian Reservation western boundary,
- PNM FCPP to San Juan Generating Station FC 345-kV Transmission Line, and
- PNM FCPP to West Mesa FW 345-kV Transmission Line; and

**WHEREAS**, Section 106 of the NHPA and its implementing regulations require a federal agency with direct or indirect jurisdiction over a federal, federally assisted, or federally permitted or approved Undertaking to take into account the effects of the Undertaking on historic properties included in or eligible for the National Register of Historic Places (NRHP), afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the Undertaking and consult with applicable Tribal and State Historic Preservation Offices and Indian tribes; and

**WHEREAS**, OSMRE has determined that the Project approvals constitute an “Undertaking” as defined at 36 CFR § 800.16(y) and that the operation and maintenance of the Project components may have an adverse effect on properties listed in or eligible for listing in the NRHP, and OSMRE has consulted with the Navajo Nation Tribal Historic Preservation Officer (NNTHPO), Hopi Cultural Preservation Office (HCPO), Zia Pueblo, New Mexico and Arizona State Historic Preservation Officers (SHPOs), BLM, NPS, EPA, BIA, and the ACHP for the Project, pursuant to 36 CFR Part 800; and

**WHEREAS**, OSMRE, in consultation with the NNTHPO, HCPO, Zia Pueblo, New Mexico SHPO, Arizona SHPO, BLM, NPS, EPA, BIA, and the ACHP, has determined that an Agreement is appropriate to govern the implementation of the Undertaking because all effects of the Undertaking on historic properties cannot be known prior to the approval of the Project and there is the potential to encounter unanticipated historic properties during the life of the Project,

and thus final identification and evaluation of certain historic properties may be deferred to a later point in time as provided for in this Agreement; and

**WHEREAS**, pursuant to 36 CFR § 800.14(b), OSMRE has elected to execute two Agreements for the FCPP and the Project (one for the Navajo Mine and one for the FCPP, ancillary facilities, and Transmission Lines), given the different aspects of the Undertaking, the jurisdiction of various federal agencies, and the separate Project Proponents and their respective responsibilities; and

**WHEREAS**, OSMRE intends to amend the existing Agreement for the Navajo Mine and has prepared this Agreement to address the FCPP, ancillary facilities, and Transmission Lines, and associated responsibilities related to continued operation of those facilities (“FCPP Programmatic Agreement” or “Agreement”); and

**WHEREAS**, OSMRE, in consultation with the NNTHPO, HCPO, Zia Pueblo, New Mexico SHPO, Arizona SHPO, BLM, NPS, EPA, BIA, and the ACHP, has determined and documented the FCPP, ancillary facilities, and Transmission Lines Project Area of Potential Effect (APE) as depicted in Attachment A including:

- All areas within the power plant lease and ROW boundaries, including proposed new ash disposal areas, as well as Morgan Lake and the existing lease areas or corridors for a water pipeline from the power plant area to the San Juan River, the water pipeline access road from the pumping plant to Morgan Lake, a pumping plant on the southern side of the San Juan River, a 69-kV Transmission Line from the power plant to the pumping station, County Road 6675 from the FCPP to the San Juan River, and
- The four existing Transmission Line ROW corridors, including PNM FCPP to West Mesa FW 345-kV (100-foot ROW), PNM FCPP to San Juan Generating Station FC 345-kV (100-foot ROW), APS FCPP to Cholla 345-kV (315-foot ROW for approximately 96 miles and two separate 195-foot corridors for approximately 40 miles), APS FCPP to El Dorado 500-kV (225-foot ROW and expanded to 328 feet (100 meters) on either side of the ROW on the Hopi Indian Reservation), the Moenkopi switchyard, and other ancillary facilities; and

**WHEREAS**, OSMRE has determined that federal actions associated with APS’s lease extensions and renewal of plant site and Transmission Line ROWs are part of the Undertaking, and that APS will have continuing obligations with respect to operation and maintenance of these existing facilities and under this Agreement, and OSMRE has therefore invited APS to be an Invited Signatory to this Agreement; and

**WHEREAS**, OSMRE has determined that federal actions associated with PNM’s renewal of Transmission Line ROWs are part of the Undertaking, and that PNM will have continuing obligations with respect to operation and maintenance of these existing facilities and under this PA, and OSMRE has therefore invited PNM to be an Invited Signatory to this Agreement; and

**WHEREAS**, the FCPP and associated APS ancillary facilities and Transmission Lines are located on Navajo Indian and Hopi Indian Reservation lands held in trust by the United States; and

**WHEREAS**, PNM Transmission Lines are located on the Navajo Nation and Zia Pueblo lands held in trust by the United States and portions of such Transmission Lines are also located on federal lands administered by the BLM and NPS, as well as New Mexico State Trust Lands, private lands, and allotments owned by individual Navajo members within the exterior boundaries or constitute dependent Indian communities; and

**WHEREAS**, the BIA has determined that reauthorization of the FCPP lease and plant site ROWs and ancillary facility and Transmission Line ROWs on Indian Trust lands is a federal action and an Undertaking that requires the BIA to comply with Section 106 and 36 CFR Part 800 and the BIA Navajo Nation Region Office serving Navajo Nation, BIA Western Region Office serving Hopi Tribe, and BIA Southwest Region Office, which serves the Zia Pueblo, are therefore Signatories to this Agreement; and

**WHEREAS**, the NNTHPO performs selected historic preservation functions for the BIA pursuant to the Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended) within the Navajo Nation; and

**WHEREAS**, the BLM has determined that approving any Transmission Line ROW reauthorization crossing BLM lands is a federal action and part of the Undertaking that requires the BLM to comply with Section 106 of the NHPA and 36 CFR Part 800 and is therefore a Signatory to this Agreement; and

**WHEREAS**, the EPA Region 9 Water Division has been invited to sign this Agreement as a Signatory; and

**WHEREAS**, the reauthorization of the FCPP lease and plant site ROWs and ancillary facility and Transmission Line ROWs on the Navajo Indian Reservation require approval by the Navajo Nation and the tribe is therefore a Signatory to this Agreement, by and through the NNTHPO, who has assumed the responsibilities of the SHPO for Section 106 on Navajo Nation land pursuant to 36 CFR § 800.6(c); and

**WHEREAS**, the renewal of the Transmission Line crossing the Hopi Indian Reservation requires approval by the Hopi Tribe and the tribe is therefore a Signatory to this Agreement; and

**WHEREAS**, the renewal of the FW Transmission Line crossing Zia Pueblo requires approval by Zia Pueblo and the tribe is therefore a Signatory Party to this Agreement; and

**WHEREAS**, the renewal of the FW Transmission Line crossing New Mexico State Trust Lands is a connected action and a state action under the jurisdiction of the New Mexico State Land Office (NM SLO). OSMRE has consulted with and invited the NM SLO to sign this Agreement as an Invited Signatory; and

**WHEREAS**, NPS has assumed a pre-existing, perpetual ROW for the PNM FCPP to West Mesa FW 345-kV Transmission Line crossing the Petroglyph National Monument, and has been invited to sign this Agreement as a Signatory; and

**WHEREAS**, PNM's FCPP to West Mesa FW 345-kV Transmission Line and FCPP to San Juan Generating Station FC 345-kV Transmission Line cross New Mexico State Trust and private lands and the New Mexico SHPO is charged with responsibilities to preserve, protect, and enhance the prehistoric, historic, and cultural heritage of New Mexico for the benefit of present and future generations under the New Mexico Cultural Properties Act § 18-6-1 et seq., New Mexico Statutes Annotated (NMSA) 1978; the New Mexico Prehistoric and Historic Sites Protection Act § 18-8-1 et seq., NMSA 1978; and the New Mexico Cultural Properties Protection Act § 18-6A-1, et seq., NMSA 1978, and is therefore a Signatory to this Agreement; and

**WHEREAS**, OSMRE has made diligent efforts to involve the public, property owners, and other interested parties early in the federal decision-making process by notifying them of the Project and its impacts through the NEPA process and providing them with information on the Project and opportunities to comment, including at several public meetings, as required by the Council on Environmental Quality's regulations implementing NEPA (40 CFR § 1506.6) and the NHPA's implementing regulations (36 CFR §§ 800.2(d); 800.6(1)(4));

**WHEREAS**, pursuant to the Arizona State Historic Preservation Act of 1982 including Arizona Revised Statutes 41-862 through 41-864, the Arizona SHPO provides advice for the protection, preservation, and interpretation of historic properties within the State of Arizona and is therefore a Signatory to this Agreement; and

**WHEREAS**, OSMRE has consulted with the New Mexico SHPO and the Arizona SHPO pursuant to Section 800.6 of the regulations (36 CFR Part 800) implementing Section 106 of the NHPA (16 USC 470f) and they are Signatories to this Agreement; and

**WHEREAS**, pursuant to 36 CFR § 800.2(c)(2)(i)(B), the BIA must also consult with the Arizona SHPO, in addition to the Hopi Tribe, regarding undertakings occurring on or affecting historic properties on Hopi tribal lands because the Hopi Tribe has not assumed SHPO functions; and

**WHEREAS**, should the Hopi Tribe assume the function of the Arizona SHPO under Section 101(d)(2) of the NHPA with respect to the Hopi Indian Reservation, the roles of the Arizona SHPO will be replaced by the Hopi THPO; and

**WHEREAS**, OSMRE has invited the Indian tribes listed in Attachment B via letter dated September 13, 2012, to participate in consultation; and

**WHEREAS**, the ACHP has participated in consultation and has been invited by OSMRE under 36 CFR § 800.6(c)(2) to sign this Agreement as a Signatory; and

**WHEREAS**, Attachment C includes summary information on the identification, evaluation, and effect assessment updates on historic properties within the APE; and

**WHEREAS**, Attachment D summarizes consultation with Indian tribes and nations, SHPOs, and other agencies; and

**WHEREAS**, the Consulting Parties recognize that the Navajo Nation has granted APS a “covenant not to regulate” in the Navajo Nation’s lease agreements with APS, including Lease Amendment #3; and

**WHEREAS**, a proposed draft of this Agreement has been circulated for public comment as an attachment to the draft Environmental Impact Statement for the Project, and OSMRE and Consulting Parties to this agreement have taken into consideration applicable public comments received regarding the draft Agreement in preparing this final Agreement; and

**NOW, THEREFORE**, OSMRE, BIA, BLM, EPA, NPS, NNTHPO, the HCPO, Zia Pueblo, New Mexico SHPO, Arizona SHPO, NM SLO, ACHP, APS, and PNM agree that the following stipulations and procedures will be implemented to take into account the effect of the Undertaking on historic properties and to satisfy all responsibilities under Section 106 of the NHPA.

## **STIPULATIONS**

### **Stipulation I. Definitions**

The definitions found at 36 CFR § 800.16 apply throughout this Agreement except where another definition is provided in Attachment E.

### **Stipulation II. Standards**

1. Identification and evaluation studies and treatment measures required under the terms of this Agreement will be carried out by or performed under the direct on-site supervision of a professional(s) who meets, at a minimum, the Secretary of the Interior's Historic Preservation Professional Qualification Standards (48 *Federal Register* 44716, September 29, 1983).
2. In addition, on all state land in New Mexico, all activities and documentation concerning cultural resources shall be carried out under the appropriate permit and by or under the direct supervision of individuals who are listed on the SHPO Directory of Qualified Supervisory Personnel in the appropriate discipline.
3. In developing scopes of work for identification and evaluation, studies, and treatment measures required under the terms of this Agreement, APS and PNM will take into account the regulations and guidelines listed in Attachment F, as applicable. OSMRE, BIA, and appropriate consulting parties (as defined in Attachment E) based on their jurisdiction will review any scopes of work developed by APS and/or PNM for the identification, evaluation, study, and treatment of historic properties.

### **Stipulation III. Confidentiality**

The distribution of sensitive information about the locations and nature of inventoried historic properties and properties of religious and cultural significance to Indian tribes, including information provided by Indian tribes to assist in the identification of such properties, shall be limited as provided for by Section 304 of NHPA (16 USC 470w3), Section 9 of the ARPA (16 USC 470hh) and its implementing regulations (43 CFR § 7.18), Navajo Nation Cultural Resources Protection Act (CRPA), the Navajo Nation Privacy Act at 2 Navajo Nation Code (NNC) Section 85, and SMCRA (Public Law 95-87), as applicable, in addition to other applicable laws. Pursuant to this stipulation, the Consulting Parties agree to appropriately safeguard and control the distribution of any confidential information they may receive as a result of their participation in this Agreement. Such safeguarded information is exempt from disclosure under the Freedom of Information Act (5 USC 552).

## **Stipulation IV. Responsibilities of Federal Agencies with Land Management and Other Permitting Authorities**

1. OSMRE will comply with and ensure the requirements of Section 106 and its implementing regulations (36 CFR Part 800) are met for the completion of the Section 106 activities undertaken prior to the finalization of the Agreement. On the effective date of this agreement, established in Stipulation XV, the BIA Navajo Regional Office will assume lead responsibility for the performance of the Agreement over the life of the undertaking. OSMRE will remain a Signatory to the Agreement.
2. Consultation for this Project will be coordinated through OSMRE until BIA assumes this responsibility.

## **Stipulation V. General Consultation Process for FCPP Site and Transmission Lines**

### **A. Consultation**

OSMRE is providing the Consulting Parties with an opportunity to provide their views on the identification and evaluation of historic properties as defined in 36 CFR § 800.16(1), including properties of religious and cultural significance to Indian tribes, and the treatment of affected historic properties, in connection with the FCPP Lease Amendment/Plant Site ROW Renewals/and Transmission Line ROW Renewals.

### **B. Identification and Evaluation of Historic Properties Conducted to Date**

1. APS and PNM, through qualified outside cultural resources consultants, have conducted extensive inventory work for the identification of cultural resources within the APE, including archaeological, architectural/engineering, and ethnographic investigations and surveys, as of the date of this Agreement. This work was reviewed by or completed under the direction of OSMRE, in consultation with the Consulting Parties.
2. OSMRE, in consultation with the Consulting Parties, has made determinations of eligibility for listing on the NRHP for sites that were identified through the inventory work undertaken to identify cultural resources. The determinations of eligibility made to date are summarized in Attachment C to this Agreement.
3. OSMRE, in consultation with the Consulting Parties, has assessed the potential effects of the Project in accordance with 36 CFR § 800.4(d) and, where historic properties may be affected, has applied the criteria of adverse effect (as outlined in 36 CFR § 800.5) to NRHP-listed or NRHP-eligible properties located within the APE to assess whether the properties may be

adversely affected by the Undertaking consistent with the process outlined in the stipulations below.

### **C. Ongoing Identification and Evaluation of Historic Properties**

The Consulting Parties agree that additional determinations of eligibility or effects determinations are ongoing for those resources for which OSMRE is finalizing determinations and/or that are part of current inventories listed in Attachment G to this Agreement. These additional determinations are listed as “pending” in Attachment C and will be completed as necessary prior to land-disturbing activities in those areas. The determinations will be included in the summary matrix provided in Stipulation XII. The protocols for ongoing identification and evaluation of historic properties are provided for the Navajo Nation in Stipulation VI, the Hopi Indian Reservation in Stipulation VII, and federal, state, private, and Zia Pueblo lands in Stipulation VIII.

### **D. Treatment of Historic Properties and Resolution of Adverse Effects**

1. Whenever feasible and practicable, avoidance of adverse effects to historic properties will be the preferred treatment. Cultural resources that are unevaluated will be treated as eligible for the NRHP and will be avoided, where practicable. Any resources that cannot be avoided will be subject to the provisions of Stipulation V(E) below. The BIA will provide information regarding development of measures to reduce or mitigate adverse effects on historic properties to the Consulting Parties as outlined in Stipulations VI, VII, and VIII.
2. When historic properties are identified in the APE on Navajo Nation lands and allotments owned by individual Navajo members, the BIA will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) and consult with the NNTHPO consistent with the protocols established in Stipulation VI.
3. When historic properties are identified in the APE on Hopi Tribe lands, the BIA will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) and consult with the HCPO and Arizona SHPO consistent with the protocols established in Stipulation VII.
4. When historic properties are identified in the APE on Zia Pueblo lands, the BIA will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) and consult with the Zia Pueblo and New Mexico SHPO consistent with the protocols established in Stipulation VIII.
5. When historic properties are identified in the APE on federal, State Trust, or private lands, the BIA will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) and consult with the applicable federal land manager

(BLM or NPS) and New Mexico SHPO consistent with the protocols established in Stipulation VIII.

6. The New Mexico SHPO will be consulted when determining effects for any properties within the State of New Mexico excluding Navajo Nation lands and allotted lands owned by individual Navajo members.

#### **E. Historic Properties Treatment Plan(s)**

Historic Properties Treatment Plan(s) will be developed, consistent with Stipulations VI, VII, and VIII, to set forth the appropriate process for treatment of historic properties that may be adversely affected by activities covered by this Agreement within the APE, with specific consideration for both the type of historic property and the relevant jurisdiction. The nature of the treatment may vary for the various types of affected historic properties, and separate Historic Properties Treatment Plans may be developed for different portions of the APE or for different types of historic properties. Emergencies will be handled as set forth in Stipulations VI, VII, and VIII.

Historic Properties Treatment Plan(s) shall:

1. Take into account any applicable federal, tribal, and/or state standards for the treatment of historic properties;
2. Describe the properties to be affected by the Undertaking and the nature of those effects;
3. Identify the significant values of the properties within relevant historic contexts and describe how those values would be affected;
4. Specify any measures to avoid, reduce, or mitigate adverse effects on those significant values; and
5. List methods and procedures for addressing any human remains and cultural objects, consistent with Stipulation X and Attachment H.

The Historic Properties Treatment Plan(s) shall include the following topics for the treatment of adverse effects to historic properties:

1. A summary of previous research and findings;
2. A description of the historic property and its significance in relation to the NRHP;
3. Short-term and long-term strategies for the protection of the historic property that are appropriate to the resource type;
4. Mitigation measures based on resource type, including but not limited to data recovery, interpretive materials, Historic American Building Survey/Historic American Engineering Record (HABS/HAER) or agreed-upon equivalent, relocation, and/or consideration of loss of use or access;

5. Schedule to complete mitigation; and
6. Strategies for distributing and/or archiving collected information, as appropriate, consistent with curation procedures in Stipulation XI.
7. Schedule for completion of reports.

Potential adverse effects on historic properties include (33 CFR § 800.5(a)(2)):

- Physical destruction of or damage to all or part of the property;
- Removal of the property from its historical location;
- Change of character within the property's setting;
- Introduction of visual, atmospheric, or audible elements that diminish integrity; or
- Neglect of a property that causes its deterioration.

The Historic Properties Treatment Plan(s) will be developed, reviewed, and finalized consistent with the processes outlined in Stipulations VI, VII, and VIII.

## **Stipulation VI. Navajo Protocols for the APE on Navajo Lands and Allotments Owned by Individual Navajo Members**

### **A. Coordination with the BIA and Navajo Nation THPO**

The BIA Navajo Regional Office and the Navajo Nation have entered into a contract pursuant to the Indian Self-determination and Education Act (Public Law 93-638, as amended) under which the Navajo Nation Historic Preservation Department (HPD) performs selected historic preservation functions for the BIA. Pursuant to that contract, the NNTHPO makes recommendations to the BIA regarding determinations of eligibility and determinations of effects and any necessary measures that may be needed to avoid, mitigate, or minimize effects of an undertaking on historic properties within the Navajo Indian Reservation to satisfy historic preservation responsibilities and to facilitate the BIA's compliance with its Section 106 responsibilities.

The NNTHPO will oversee the identification by the Proponent or its contractor and complete evaluations of historic properties within APEs under the jurisdiction of the Navajo Nation and on allotments owned by individual Navajo members, and make recommendations to the BIA on the assessment of effects and resolution of any adverse effects to those historic properties (including appropriate treatment measures) consistent with the terms of this Agreement and in accordance with Navajo Nation policies, procedures, and guidelines for the preservation and protection of cultural resources; traditional cultural properties (TCPs); cemeteries, gravesites, and human remains; and historic, modern, and contemporary abandoned sites, as appropriate.

The BIA will review the information provided by the NNTHPO, consult with the NNTHPO under Section 106, and make final determinations regarding the identification and evaluation of historic properties and resolution of adverse effects.

## **B. Operation and Maintenance**

### ***1. Procedures that have been Determined not to Affect Historic Properties***

The Consulting Parties agree that most activities related to operation and maintenance of the FCPP, ancillary facilities, and both APS's and PNM's Transmission Lines are not likely to affect historic properties. In general, these activities occur largely on the surface in areas that are already disturbed, do not introduce new structural or visual elements, and require only nominal ground disturbance or alterations to existing structures. Therefore, the Consulting Parties agree that the following Project operations and maintenance activities will not affect historic properties and are exempt from further review/consultation:

a) **Aerial Maintenance and Non-Earth-Disturbing Operation and Maintenance Activities**

The Consulting Parties agree that routine aerial maintenance and non-earth-disturbing activities will not affect historic properties. When the routine maintenance consists solely of aerial maintenance or non-earth-disturbing activities, the activity does not require prior notification, review, assessments, or consultation with the NNTHPO or BIA, and no notice will be given. Additionally, no review by the Project Proponents will be required for these activities.

Examples include but are not limited to:

- Maintenance, retrofit, or replacement of above-ground electric Transmission Line structure components including insulators, hardware, cross-braces, cross-members, static cable lines, or switches, and conductors;
- Filling voids or cavities in the wood of utility poles;
- Repair, replacement, or installation of transmission pole numbers;
- Repair, replacement, or installation of pole-mounted components such as insulators, conductors, cross arms, bracing, and associated hardware;
- Transmission and distribution electric line patrols;
- Remote or manual electrical switching work, including turning electric services on or off;
- Electric line spotting;
- Vegetation management within the ROW using means that do not cause ground disturbance, including crews with chainsaws and the application of

approved herbicides by backpack-mounted sprayers or quad-mounted sprayer, which shall occur during dry conditions when through historic properties;

- Annual maintenance inspection with truck, maintenance with bucket truck, and access to ROW by dirt access road for 69-kV Transmission Line, which shall occur during dry conditions when through historic properties; and/or
- Biannual inspection and as-needed paving repairs and replacement of paving, chip sealing, relining, and Botts' dots replacements for roads.

b) Earth-Disturbing Activities in Areas of Previous Disturbance that have been Surveyed

The Consulting Parties agree that when the routine maintenance consists solely of earth-disturbing activities in areas of previous disturbance that have been surveyed, the activity does not require prior notification, review, assessments, or consultation with NNTHPO or the BIA, and no notice will be given. Additionally, no review by the Project Proponent will be required for these activities. However, if during the course of preparing for the work activity it is discovered that a known historic property exists within 50 feet of the activity, procedures for areas previously surveyed and cultural resources within 50 feet of the activity described in Stipulation VI (B)(2)(a)(ii) will be followed. If there are no known historic properties within 50 feet of the activity, no further review is required for these activities.

Examples of earth-disturbing activities in areas of previous disturbance include but are not limited to:

- Anchor repair and maintenance (involves digging 1 to 3 feet in diameter and up to 1 to 2 feet in depth around an existing anchor to remove wind-blown deposits and expose the anchor rod and buried guy wires);
- Road blading on existing, previously bladed access roads;
- Erosion control work to protect the ROW from erosion in areas of previous disturbance;
- Excavations to repair or replace ground wires;
- Excavations immediately around the base of transmission poles;
- Re-grading previously established, mechanically leveled pads around transmission structures to permit safe equipment set-up;
- Work within existing fenced/walled perimeters of electric substations or switching stations;

- Remedial treatment of poles (involves disturbing approximately 1 to 2 feet in diameter and up to 3 feet in depth around the base of an existing pole to examine pole condition and possibly apply a treatment);
- Maintenance, repair, replacement, and installation of poles;
- Maintenance, repair, installation, or replacement of certain ancillary facilities including, but not limited to, gates, fences, and signs;
- Repair of existing access roads that do not traverse historic properties using in-kind materials with all work conducted within the existing footprint of the road;
- Ground patrols within the ROW with all-terrain vehicles (ATVs), provided no new trails or roadways are created;
- Application of approved herbicides by ATV-mounted sprayers on existing trails or roadways;
- Annual inspection of pipeline, concrete vaults and works, excavation of water course at end of piping to Morgan Lake, and repairs of joint to joint and pipe wall erosion.

## ***2. Procedures for which Additional Evaluation is Required***

For activities that may affect historic properties, the Project Proponent will first conduct the following internal review process, as appropriate to the activity, and in conformance with applicable standards in Stipulation II:

- Determine if the work is within the Project APE;
- If the work is within the Project APE, review existing information on historic properties (including historic properties identified in Attachment C);
- Assess the potential existence of historic properties by reviewing existing field survey and other research; and
- Determine the degree of existing disturbance by performing a field inspection, as appropriate.

### **a) Earth-Disturbing Activities in Non-Disturbed Areas**

The Consulting Parties agree that when routine maintenance activities result in earth-disturbing activities in areas that may not have been previously disturbed, the activity is subject to the following additional processes.

#### ***(i) Area Previously Surveyed and No Cultural Resources***

If the area has been previously surveyed and no cultural resources were identified, the Project Proponent will proceed with the routine maintenance. No notification

or approval will be required before work begins. The Project Proponent will maintain records of activities that proceed under these circumstances for a period of six (6) years. During that time, records will be made available to the NNTHPO and the BIA.

*(ii) Area Previously Surveyed and Cultural Resources Identified within 50 feet of the Activity*

If the area has been previously surveyed and cultural resources were identified within 50 feet of the activity, a permitted contractor will evaluate the anticipated effect of the routine maintenance activity on the known resource prior to commencement of the activity.

**No Effect.** If the results of the internal evaluation process indicate that any identified cultural resources can and will be avoided, the Project Proponent will submit a Maintenance Evaluation Report via email or as hard copy within ten (10) calendar days of conducting the review to the NNTHPO and the BIA. This report will confirm that the resources can and will be avoided and the Project Proponent may proceed with the maintenance. No response or approval will be required before work begins.

**Adverse Effects.** If the results of the internal evaluation process indicate that cultural resources that have been determined to be NRHP-eligible will not be avoided and will be impacted, the BIA, in consultation with the NNTHPO, shall ensure the Project Proponents develop a Historic Properties Treatment Plan(s) to resolve the adverse effects of the activity. The Project Proponent will submit the Historic Properties Treatment Plan(s) via email or as hard copy to the NNTHPO and the BIA. The NNTHPO and BIA will review the Historic Properties Treatment Plan(s) and provide comments within thirty (30) calendar days. Project Proponents will address any comments provided by the BIA or NNTHPO in preparing the final Historic Properties Treatment Plan(s). If no response from the NNTHPO or BIA is received by the Project Proponent within thirty (30) calendar days, the Project Proponent must continue to contact the NNTHPO and the BIA in order to obtain an ARPA permit, as applicable.

The Project Proponent will send a copy of the final Historic Properties Treatment Plan(s) to NNTHPO and the BIA. The records documenting the internal evaluation process will be provided to the NNTHPO and the BIA by the Project Proponent within thirty (30) calendar days of their receipt.

*(iii) Area has not been Previously Surveyed*

A permitted contractor will conduct a survey of the area by systematically walking over the ground surface, including those areas listed in Attachment G of this Agreement, and in any areas later added to the APE in the event of future potential Project modifications including new access routes into the ROW after issuance of any ROD, provided they follow the NNTHPO permitting process, as applicable. This survey is designed to gather information about potential cultural resources prior to the commencement of the maintenance activity and will determine whether cultural resources are likely to be present. The following procedures will be implemented depending on the findings of the cultural resources survey.

**Negative Survey.** If the survey results indicate no cultural resources are present, the Project Proponent will submit a negative survey report via email or as hard copy within ten (10) calendar days of conducting the survey to the NNTHPO and BIA, and may proceed with the activity. No response or approval from the NNTHPO and BIA will be required before work begins.

**Positive Survey.** If cultural resources sites are identified during the survey, they will be recorded on applicable forms. The Project Proponent will submit a written report via email or as hard copy following applicable guidelines to the NNTHPO and BIA. The NNTHPO will review the report and provide a recommendation to the BIA on the NRHP eligibility of any newly recorded cultural resources in the APE in accordance with 36 CFR § 800.4(c), the potential effects of the Project in accordance with 36 CFR § 800.4(d), if historic properties may be affected, and the determination of any impacts of the proposed activity (as outlined in 36 CFR § 800.5) within thirty (30) calendar days of the receipt of the report. The BIA will review the NNTHPO recommendation and make a final determination of eligibility and project effects within thirty (30) calendar days. If the determination is that NRHP-eligible historic properties will not be avoided and will be impacted, the BIA, in consultation with the NNTHPO, shall ensure the Project Proponents develop a Historic Properties Treatment Plan(s) to resolve the adverse effects of the activity, following the procedure outline in Stipulations V(E) and VI(B)(2)(a)(ii), above. If no response from the NNTHPO or BIA is received by the Project Proponent within thirty (30) calendar days, the Project Proponent must continue to contact NNTHPO and BIA in order to obtain an ARPA permit, as applicable.

Attachment H (Unanticipated Discovery Procedures and Protocols) should be followed if an unanticipated discovery occurs.

b) Actions Involving Historic Buildings or Structures

The Consulting Parties agree that any adverse effect to NRHP-eligible or listed historic buildings or structures within Navajo Nation jurisdiction resulting from other actions related to the Undertaking shall be resolved through preparation of appropriate: (1) inventory; (2) evaluation of adverse effects; and (3) mitigation.

**3. *Emergency Maintenance and Response***

A number of events can occur within the Project APE that require a rapid response in order to safeguard facilities, provide for protection of wildlife habitat, protect public and private property, and prevent serious injury or loss of human life. These include, but are not limited to: structural or mechanical failure; transmission outages due to maintenance conditions; fire; wind and electrical storms; flood; and earthquake. The emergency maintenance and response procedure is designed to be implemented if such events occur.

Emergency maintenance typically commences within 24 hours of discovery and may occur immediately with notification to the NNTHPO and BIA. When an emergency maintenance activity results in potential impacts to cultural resources, the Project Proponent will follow the expedited procedures outlined below, after the emergency work is completed.

An APS or PNM archaeologist will be notified of the need for emergency maintenance work within twenty-four (24) hours. After the emergency maintenance is conducted, the APS or PNM archaeologist will evaluate the potential impacts to cultural resources and will prepare a report that outlines the emergency work conducted, the impacts, and any proposed mitigation measures within twenty (20) calendar days. The NNTHPO and BIA will review the report within ten (10) calendar days. This provision is applicable to all emergency situations on land within Navajo Nation jurisdiction including allotments owned by individual Navajo members.

**Stipulation VII. Hopi Protocols for APS Transmission Line ROW APE on Hopi Indian Reservation**

**A. Hopi Cultural Preservation Office Authority**

The HCPO is the official branch of the Hopi tribal government that oversees cultural resources management on the Hopi Indian Reservation. The HCPO reviews and issues permits for all outside researchers and contractors seeking to conduct cultural resources work on the Hopi Indian Reservation. In addition, the HCPO has the right of first refusal to conduct any cultural resources projects, including those related to compliance

with Section 106 of the NHPA, on the Hopi Indian Reservation. Therefore, the HCPO will serve as the initial contractor for APS for any work conducted on the Hopi Indian Reservation under this Agreement.

## **B. Coordination with the BIA, HCPO, and Arizona SHPO**

BIA Western Region will oversee the identification and complete evaluations of historic properties by Project Proponents within the APE located on the Hopi Indian Reservation, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with the HCPO and Arizona SHPO consistent with the terms of this Agreement.

1. APS will convene an annual meeting with the HCPO, BIA, and Arizona SHPO to discuss anticipated activities for the coming year. At this time, an assessment will be made as to which activities may require further consultation or notification of the HCPO when they are implemented. Activities that are identified as needing no further consultation can be considered as having no potential to impact historic properties and are discussed under Stipulation VII(C)(1) for the purposes of this Agreement. APS will submit a written summary of the annual meeting to the BIA, who will distribute the summary to the HCPO and Arizona SHPO upon receipt.
2. APS will inform the BIA and HCPO immediately as new activities are added or substantial changes occur to previously discussed activities. The BIA will inform Arizona SHPO immediately. The BIA will consult with the HCPO and Arizona SHPO in regard to determination of eligibility and project effects for these new activities, as needed, following the protocols outlined in Stipulation VII(C) and 36 CFR Part 800.
3. Some information regarding historic properties, including TCPs, may be deemed sensitive and should not be released to consulting parties other than the BIA and Arizona SHPO beyond what is necessary for the specific implementation of activities covered under this Agreement. The release of sensitive information is subject to the laws listed in Stipulation III, as applicable. Any use of information regarding historic properties on the Hopi Indian Reservation other than for the purpose of implementing the activities covered under this Agreement requires consultation and concurrence by the HCPO.
4. The HCPO may request to monitor any activities occurring under this Agreement on the Hopi Indian Reservation.

## C. Routine Maintenance

Routine maintenance is defined as those activities required in order to maintain existing infrastructure in a safe, operational status. It includes activities that do not result in ground disturbance and those that have the potential to cause ground disturbance.

### *1. Activities with No Potential to Effect Historic Properties*

The Consulting Parties agree that activities that do not have the potential to affect historic properties will require no further review or consultation beyond that identified under Stipulation VII(B). APS will concurrently notify the BIA and HCPO when work crews will be conducting these activities. The BIA will notify Arizona SHPO upon receipt of notification. These types of activities include, but are not limited to, aerial maintenance and non-earth-disturbing operation and maintenance activities.

Examples of aerial maintenance include but are not limited to:

- Maintenance, retrofit, or replacement of above-ground electric Transmission Line structure components including insulators, hardware, cross-braces, cross-members, static cable lines, or switches, and conductors.

Examples of non-earth-disturbing activities include but are not limited to:

- Transmission Line patrols on existing roads,
- Repair, replacement, or installation of transmission pole numbers,
- Repair, replacement, or installation of pole-mounted components such as insulators, conductors, cross arm, bracing, and associated hardware,
- Electric line spotting,
- Vegetation management within the ROW using non-mechanical means including crews with chainsaws and the application of approved herbicides by backpack-mounted sprayers or light mechanical means including quad-mounted sprayers, during dry conditions, and
- Annual maintenance inspection with truck, maintenance with bucket truck, and access to ROW by dirt access road, during dry conditions.

Should any previously unidentified or undocumented historic properties be encountered during the performance of an activity with no potential to impact historic properties, the procedures provided in Attachment H (Unanticipated Discovery Procedures and Protocols) should be followed.

## ***2. Activities with Potential to Effect Historic Properties***

Any activity that may cause surface or subsurface ground disturbance is considered to have the potential to impact historic properties. This includes, but is not limited to:

- Repair of existing access roads, including blading, and the development of new access roads,
- Erosion control work to protect the ROW from erosion,
- Excavations to repair or replace ground wires,
- Excavations immediately around the base of transmission poles,
- Maintenance, repair, installation, or replacement of certain ancillary facilities including, but not limited to, gates, fences, and signs, or
- Vegetation management within the ROW using mechanical means, which include but are not limited to mowers.

For these types of activities, APS will first conduct an internal review process in collaboration with HCPO to determine if the activity is within the Project ROW or previously inventoried APE.

- a. If the activity is within the Project ROW or previously inventoried APE, APS, in collaboration with the HCPO, will assess the potential existence of historic properties, including TCPs, through a review of existing field surveys and other information on historic properties (including historic properties identified in Attachment C). Prior to the commencement of the activity, an APS archaeologist will confirm with the HCPO the results of the findings and the presence or absence of historic properties.

### *(i) No Historic Properties Present*

If the review process identifies that there are no historic properties present, APS will record the collaborative determination and report the activity and determination in a summarized annual comment matrix to the BIA and Arizona SHPO as specified in Stipulation XII.

### *(ii) Historic Properties Present*

If the review process determines that historic properties are present, APS and HCPO will assess whether the planned activity will affect the historic properties present and make either of the following determinations:

- **No Historic Properties Affected.** If APS and HCPO collaboratively agree on measures that will avoid effects to historic properties, which may include adequate avoidance distance and/or the presence of an

HCPO monitor, then the activity will have a finding of no historic properties affected. When APS and HCPO implement such measures that will have no effect to historic properties, APS will record the collaborative decision and report the activity and decision in a summarized annual comment matrix to the BIA and Arizona SHPO as specified in Stipulation XII.

- **Adverse Effects.** If the results of the evaluation process indicate that cultural resources will be impacted, APS will develop a Historic Properties Treatment Plan(s) with measures to reduce or mitigate those impacts. Any cultural resource work on Hopi land will be conducted by the HCPO, pursuant to the right of first refusal in Stipulation VII(A) or by a consultant or independent researcher who is licensed to carry out the work in a manner consistent with Section 5 of Hopi Ordinance 26.

APS will submit the Historic Properties Treatment Plan(s) to the BIA and HCPO for concurrent thirty (30) day review. The BIA will forward the Historic Properties Treatment Plan(s) to the Arizona SHPO after incorporation of HCPO review comments. The Arizona SHPO will conduct an thirty (30) calendar day review and comment period. Comments from the BIA, HCPO, and Arizona SHPO will be incorporated into the Historic Properties Treatment Plan by APS. APS shall conduct the mitigation work upon approval of the Historic Properties Treatment Plan and submit the preliminary report. Work on the planned activity can commence after the preliminary report is reviewed and commented on by the BIA, in consultation with the HCPO and Arizona SHPO.

A Treatment Plan(s) for historic properties may include data recovery. Stipulation VII(D) outlines the development and review of a Data Recovery Plan(s) and review of findings, subject to applicable ARPA permit requirements.

- b. Activities in any areas not previously inventoried, including new access routes into the ROW, and any areas added to the APE in the event of future potential Project modifications, shall be subject to Section 106 compliance consistent with the process established in this Agreement. The HCPO will be provided the first right of refusal to conduct the necessary research and identify and evaluate the historic properties. Should the HCPO decide not to conduct the work, an outside

permitted contractor may be employed by APS provided the outside contractor follows the HCPO permitting process. APS will provide funding to complete any additional identification and evaluation under this section.

Preliminary technical documentation completed under this section will be provided to APS and the BIA. Upon receipt, the BIA will provide the documentation to the HCPO (if documentation is completed by an outside entity) for a concurrent thirty (30) day review period. The BIA will forward the preliminary documentation to Arizona SHPO once HCPO comments have been incorporated for a thirty (30) day review period. Once the inventory process has been completed, the procedures outlined in Stipulation VII(C) will be followed.

#### **D. Historic Property Treatment Plan(s) for Mitigation of Adverse Effects to Archaeological Sites**

##### ***1. Development of a Data Recovery Plan(s) as Treatment of Adverse Effects***

Consistent with Stipulation VII(A), APS will develop a Data Recovery Plan(s), in cooperation with the HCPO, for data recovery of historic properties and archaeological sites that cannot be avoided by activities, if agreed upon by the HCPO, BIA, and Arizona SHPO. The Data Recovery Plan will be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 *Federal Register* 44734-37), the ACHP's *Handbook for Treatment of Archaeological Properties*, and the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (May 18, 1999). Data Recovery Plans will recognize the cultural values of archaeological sites and will incorporate tribal insights and resources to elucidate site context and meaning.

The Data Recovery Plan will specify:

- a. The properties or portion of properties where data recovery is to be carried out. The Data Recovery Plan will also specify any property or portion of property that would be destroyed or altered without treatment along with the rationale for not treating the property or portion of property.
- b. The results of previous research relevant to the Undertaking on the Hopi Indian Reservation including archaeological and ethnographic works.
- c. The research questions to be addressed through data recovery, with an explanation of their relevance and importance within an appropriate tribal and historical context.
- d. The field and laboratory analysis methods to be used, consistent with Stipulation VII(A), with an explanation of their relevance to the research questions. Analyses

shall incorporate information held by elders and ethnographic research in addition to standard archaeological methods.

- e. The methods to be used for disseminating data to the professional community and the public, taking into account that some information may be deemed sensitive and should be protected, consistent with Stipulation III.
- f. A proposed schedule for project tasks, and a schedule for the submission of draft and final reports to the Consulting Parties.
- g. The proposed disposition and curation of recovered materials and records in accordance with Stipulation XI, consistent with ARPA (Section 4.b.3) and the Antiquities Act of 1906 (16 USC 432[3]).
- h. A Monitoring and Discovery Plan outlining the procedures for monitoring and ensuring compliance with Attachment H and governing unexpected discoveries or newly identified properties during geotechnical investigations or construction of the Project.
- i. A protocol for ensuring compliance with Attachment H, governing discovery of human remains, funerary objects, sacred ceremonial objects, or objects of cultural patrimony.

## ***2. Review and Comment on the Data Recovery Plan(s)***

- a. APS or the HCPO, as appropriate, will distribute the draft Data Recovery Plan to the BIA and HCPO (if documentation is completed by an outside entity) for thirty (30) calendar day review. The BIA will submit the draft Data Recovery Plan after incorporation of HCPO comments to Arizona SHPO for thirty (30) calendar day review. All comments shall be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments on to APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- b. If revisions to the Data Recovery Plan are made, APS or the HCPO will distribute the revised Data Recovery Plan to the BIA and HCPO (if documentation is completed by an outside entity) for concurrent thirty (30) calendar day review. The BIA will submit the revised Data Recovery Plan after incorporation of HCPO comments to Arizona SHPO for a thirty (30) calendar day review. All comments will be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments onto APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- c. APS will provide the final Data Recovery Plan to the BIA and HCPO. The BIA will forward the final Data Recovery Plan to the Arizona SHPO.

### ***3. Review and Comment on the Preliminary Report of Findings***

- a. If necessary, an in-field meeting will be held upon completion of Phase I fieldwork to apprise the BIA, HCPO, and Arizona SHPO of the methods employed and the preliminary results of the field effort. If appropriate, Phase II data recovery will begin immediately upon in-field approval by the BIA, HCPO, and Arizona SHPO of the results of Phase I fieldwork. APS shall provide a written summary via letter or email to the BIA, HCPO, and Arizona SHPO summarizing the in-field meeting.
- b. Within fourteen (14) calendar days after the completion of all fieldwork, the party responsible for the work will prepare a brief Preliminary Report of Findings. This report shall contain, at a minimum:
  - A discussion of the methods and treatments applied to each property, with an assessment of the degree to which these methods and treatments followed the direction provided by the Data Recovery Plan along with a justification of all deviations, if any, from the approved Data Recovery Plan;
  - Topographic site plans for the properties depicting all features and treatment areas;
  - General description of recovered artifacts and other data classes, including features excavated or sampled; and
  - Discussion of other analyses to be conducted for the Data Recovery Report, including any proposed changes in the methods or levels of effort from those proposed in the Data Recovery Plan.
- c. APS or the HCPO, as appropriate, will distribute the draft Preliminary Report of Findings to the BIA and HCPO for concurrent thirty (30) day review. The BIA will distribute the draft Preliminary Report of Findings after incorporation of HCPO comments to the Arizona SHPO for thirty (30) day review. All comments shall be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments on to APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- d. If revisions to the Preliminary Report of Findings are made, APS will provide the report to the BIA and HCPO for a concurrent thirty (30) calendar day review. The BIA will forward the revised Preliminary Report of Findings after incorporation of HCPO comments to the Arizona SHPO for thirty (30) calendar day review. All comments shall be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments on to APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- e. APS or the HCPO, as appropriate, shall ensure that any written comments received are taken into account during the preparation of the final document.

- f. If the BIA, HCPO, or Arizona SHPO objects to any aspect of the report, the BIA shall resolve the objection according to Stipulation XIV.
- g. Once the Preliminary Report of Findings has been accepted as a final document, data recovery efforts will be deemed complete and in compliance with the agreed-upon goals, and APS can commence the activity.

#### ***4. Review and Comment on Data Recovery Report***

- a. Within 180 calendar days of completion of data recovery, a report will be prepared incorporating all appropriate data analyses and interpretations;
- b. APS or the HCPO, as appropriate, will distribute the draft Data Recovery Report to the BIA and HCPO (if documentation is completed by an outside entity) for concurrent thirty (30) calendar day review. The BIA will distribute the draft Data Recovery Report after incorporation of HCPO comments to the Arizona SHPO for thirty (30) calendar day review. All comments shall be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments on to APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- c. If revisions to the Data Recovery Report are made, APS will forward the report to the BIA and HCPO for concurrent twenty (20) calendar day review. The BIA will forward the revised Data Recovery Report after incorporation of HCPO comments to the Arizona SHPO for twenty (20) calendar day review. All comments shall be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments on to APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- d. APS or the HCPO, as appropriate, shall ensure that any written comments received are taken into account during the preparation of the final document.
- e. If the BIA, HCPO, and Arizona SHPO continue to object to any aspect of the report, the BIA shall resolve the objection according to Stipulation XIV, governing dispute resolution.

#### **E. Historic Property Treatment Plan(s) for Mitigation of Adverse Effects to Non-Archaeological Sites**

Consistent with Stipulation VII(A), APS will develop Historic Property Treatment Plan(s), in cooperation with the HCPO, for alternative mitigation measures concerning types of historic properties that are significant due solely to cultural values (non-archaeological TCPs) when these historic properties cannot be avoided by activities. BIA, in consultation with HCPO, will consult with Arizona SHPO for concurrence on the proposed treatment plans, as specified in Stipulation VII(C)(2)(a)(ii). Treatment

plans shall include any timelines for completion, reporting and subsequent commencement of the activity.

## **F. Emergencies**

A number of events can occur within the Project APE that require a rapid response to safeguard facilities, provide for protection of wildlife habitat, protect public and private property, and prevent serious injury or loss of human life. These include, but are not limited to:

- Structural or mechanical failure;
- Transmission outages due to maintenance conditions;
- Fire;
- Wind and electrical storms;
- Flood; and
- Earthquake.

Emergency maintenance typically commences within twenty-four (24) hours of discovery. APS will notify the HCPO and BIA by email or phone with written confirmation as soon as reasonably practicable after an emergency activity. Upon receipt of this confirmation, the BIA will notify the Arizona SHPO via email and phone. APS will take all reasonable measures to conduct an expedited review for the potential presence of historic properties in the area of the emergency as outlined in Stipulation VII(C)(2) above and notify the HCPO and BIA of the results as soon as completed, where practicable.

If the emergency maintenance activity is likely to result in potential impacts to known cultural resources or if there has not been a historic properties inventory of the area, then APS will enable APS cultural program staff and HCPO staff to conduct monitoring of the emergency maintenance. APS will provide for expedited documentation of any historic properties that are encountered, where practicable. Efforts will be made to avoid or minimize impacts to any historic properties identified during the emergency maintenance activities. APS will submit a report detailing the activities that occurred during the emergency maintenance within fifteen (15) calendar days of the incident to the HCPO and BIA. If historic properties are affected, the BIA will forward the documentation after incorporation of HCPO comments to the Arizona SHPO for a fifteen (15) day review period. This provision is applicable to all emergency situations on Hopi lands.

## **G. Replacement of SHPO by Hopi THPO**

At the current time, the Hopi Tribe has not assumed the role of the Arizona SHPO. Should that occur during the duration of this Agreement, the roles of the Arizona SHPO will be replaced by the Hopi THPO. The replacement of the Arizona SHPO by Hopi THPO would require an amendment to this Agreement pursuant to Stipulation XVII.

## **Stipulation VIII. Protocols for Federal, State, and Private Lands, and Zia Pueblo Lands, in APE for PNM Transmission Lines**

### **A. Coordination with the BIA, Applicable Federal Land Manager, Zia Pueblo, NM SLO and/or New Mexico SHPO**

The BIA, as lead federal agency, will coordinate with applicable federal land managers, Zia Pueblo, and the New Mexico SHPO as follows:

- The BIA Navajo Region will oversee the identification and completion of evaluations of historic properties by Project Proponents within the APE located on BLM land, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with BLM, New Mexico SHPO, and other consulting parties consistent with the terms of this Agreement.
- The BIA Navajo Region will oversee the identification and completion of evaluations of historic properties by Project Proponents within the APE located on NPS land, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with the NPS and New Mexico SHPO consistent with the terms of this Agreement.
- BIA Southwest Region will oversee the identification and complete evaluations of historic properties by Project Proponents within the APE located on Zia Pueblo land, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with Zia Pueblo and New Mexico SHPO consistent with the terms of this Agreement.
- The BIA Navajo Region will oversee the identification and completion of evaluations of historic properties by Project Proponents within the APE located on New Mexico State Trust Land, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with the NM SLO and the New Mexico SHPO consistent with the terms of this Agreement.

- The BIA Navajo Region will oversee the identification and completion of evaluations of historic properties by Project Proponents within the APE located on private property, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with the New Mexico SHPO consistent with the terms of this Agreement.

## **B. Operation and Maintenance**

### ***1. Procedures that have been Determined not to Affect Historic Properties***

The Consulting Parties to this Agreement agree that most activities related to operation and maintenance of the Transmission Lines are not likely to affect historic properties. In general, these activities occur largely on the surface in areas that are already disturbed, do not introduce new structural or visual elements, and require only nominal ground disturbance or alterations to existing structures. Therefore, the Consulting Parties agree that the following Project operations and maintenance activities will not affect historic properties and are exempt from further review/consultation:

- a) Aerial Maintenance and Non-Earth-Disturbing Operation and Maintenance Activities

The Consulting Parties agree that routine aerial maintenance and non-earth-disturbing activities will not affect historic properties. When the routine maintenance consists solely of aerial maintenance or non-earth-disturbing activities, the activity does not require prior notification, review, assessments, or consultation with federal agencies or Consulting Parties and no notice will be given. Additionally, no review by PNM will be required for these activities.

Examples include but are not limited to:

- Maintenance, retrofit, or replacement of above-ground electric Transmission Line structure components including insulators, hardware, cross-braces, cross-members, static cable lines, or switches, and conductors;
- Filling voids or cavities in the wood of utility poles;
- Transmission and distribution electric line patrols;
- Repair, replacement, or installation of transmission pole numbers;
- Repair, replacement, or installation of pole-mounted components such as insulators, conductors, cross-arm, bracing, and associated hardware;
- Transmission and distribution electric line patrols;
- Remote or manual electrical switching work, including turning electric services on or off;

- Electric line spotting;
  - Vegetation management within the ROW using means that do not cause ground disturbance including crews with chainsaws and the application of approved herbicides by backpack-mounted sprayers or quad-mounted sprayers, which shall occur during dry conditions when through historic properties; and
  - Annual maintenance inspection with truck, maintenance with bucket truck, and access to ROW by dirt access road, which shall occur during dry conditions when through historic properties.
- b) Earth-Disturbing Activities in Areas of Previous Disturbance that have been Surveyed and have no Historic Properties within 50 Feet

The Consulting Parties agree that when the routine maintenance consists solely of earth-disturbing activities in areas of previous disturbance that have been surveyed and have had no historic properties identified within 50 feet, the activity does not require prior notification, review, assessments, or consultation with federal agencies or Consulting Parties and no notice will be given. A PNM archaeologist will review and confirm that there are no historic properties within 50 feet. If while preparing for the work activity, it is discovered that a known historic property exists within 50 feet of the activity, procedures for areas previously surveyed and containing cultural resources within 50 feet of the activity described in Stipulation VIII(B)(2)(a)(ii) will be followed. If there are no known historic properties within 50 feet of the activity, no further review is required for these activities.

Examples of earth-disturbing activities in areas of previous disturbance that have been surveyed and have had no historic properties identified within 50 feet include but are not limited to:

- Anchor repair and maintenance (involves digging 1 to 3 feet in diameter and up to 1 to 2 feet in depth around an existing anchor to remove wind-blown deposits and expose the anchor rod and buried guy wires);
- Road blading on existing, previously bladed access roads where blading would be confined to the existing road prism and erosion control work;
- Erosion control work to protect the ROW from erosion in areas of previous disturbance;
- Excavations to repair or replace ground wires;
- Excavations immediately around the base of transmission poles;
- Re-grading previously established, mechanically leveled pads around transmission structures to permit safe equipment set-up;

- Work within existing fenced/walled perimeters of electric substations or switching stations;
- Remedial treatment of poles (involves disturbing approximately 1 to 2 feet in diameter and up to 3 feet in depth around the base of an existing pole to examine pole condition and possibly apply a treatment);
- Maintenance, repair, replacement, and installation of poles;
- Maintenance, repair, installation, or replacement of certain ancillary facilities including, but not limited to, gates, fences, and signs; and/or
- Repair of existing access roads that do not traverse historic properties using in-kind materials with all work conducted within the existing footprint of the road.

c) Actions Involving Historic Buildings or Structures

The Consulting Parties agree that any adverse effect to NRHP-eligible or listed historic buildings or structures resulting from other actions related to the Undertaking shall be resolved through preparation of appropriate: (1) inventory; (2) evaluation of adverse effects; and (3) mitigation.

***2. Procedures for which Additional Evaluation is Required***

For activities that may affect historic properties, PNM and PNM's archaeologist will first conduct the following internal review process, as appropriate to the activity, and in conformance with applicable standards in Stipulation II:

- Determine if the work is within the Project APE;
- If the work is within the Project APE, review existing information on historic properties (including historic properties identified in Attachment C);
- Assess the potential existence of historic properties by reviewing existing field survey and other research;
- Determine the degree of existing disturbance by performing a field inspection as appropriate and then follow Stipulation VIII(B)(2)(a) as appropriate.

a) Earth-Disturbing Activities in Non-Disturbed Areas

The Consulting Parties agree that when the routine maintenance activities result in earth-disturbing activities in areas that may have not been previously disturbed, the activity is subject to the following additional processes:

*(i) Area Previously Surveyed and Found to have No Historic Properties*

If the area has been previously surveyed and no historic properties have been identified, PNM will proceed with the routine maintenance. No notification or approval will be required before work begins. PNM will maintain records of activities that proceed under these circumstances for a period of three (3) years. During that time, records will be made available to the BIA and Consulting Parties.

*(ii) Area Previously Surveyed and Containing Cultural Resources within 50 Feet of the Activity*

If the area has been previously surveyed and cultural resources have been identified within 50 feet of the activity, a permitted cultural resources contractor will evaluate the anticipated effect of the routine maintenance activity on the known resource prior to commencement of the activity in consultation with the BIA.

**No Historic Properties Affected.** If the results of the internal evaluation process indicate that any identified cultural resources can and will be avoided, PNM will submit a Maintenance Evaluation Report via email or as hard copy to the BIA and Consulting Parties. This report will confirm that the resources can and will be avoided and PNM may proceed with the activity. No response or approval will be required before work begins.

**No Adverse Effect.** If the results of the internal evaluation process indicate that identified cultural resources exist in the activity area, but adverse effects can be avoided, PNM will submit a Maintenance Evaluation Report via email or as a hard copy to the BIA and the applicable federal land manager and New Mexico SHPO for federal lands or New Mexico State Trust Lands for a thirty (30) calendar day review and comment period. Work on the planned activity can commence after review and concurrence with the No Adverse Effect determination. If no response from the applicable federal land manager, the New Mexico SHPO or the BIA is received by PNM within thirty (30) calendar days, PNM may proceed with the activity.

**Adverse Effects.** If the results of the internal evaluation process indicate that cultural resources will be impacted, PNM will submit a Historic Properties Treatment Plan(s) via email or as hard copy to the BIA and the applicable federal land manager and New Mexico SHPO for federal lands or New Mexico State Trust Lands for a thirty (30) calendar day review and comment period. Work on the planned activity can commence after review and written approval of the Historic Properties Treatment Plan by the BIA, in consultation with the applicable

federal land manager and New Mexico SHPO, and after the plan's execution by PNM. If treatment entails avoidance and no response from the applicable federal land manager and/or New Mexico SHPO and/or the BIA is received by PNM within thirty (30) calendar days, PNM may proceed with the activity provided PNM follows the resource management recommendations outlined in the Historic Properties Treatment Plan(s).

*(iii) Area has not been Previously Surveyed*

A permitted cultural resources contractor will conduct a survey of the area by systematically walking over the ground surface, including those areas listed in Attachment G of this Agreement, and in any areas later added to the APE in the event of future potential modifications after issuance of any ROD including new access into the ROW, provided the agency permitting processes are followed. This survey is designed to gather information about potential cultural resources prior to the commencement of the maintenance activity and will determine whether cultural resources are likely to be present. The following procedures will be implemented depending on the findings of the cultural resources survey:

**Negative Survey.** If the survey results indicate no cultural resources are present, PNM will submit a negative survey report via email or as hard copy within ten (10) calendar days of conducting the survey to the BIA. The BIA will review and submit the report to the applicable federal land manager and New Mexico SHPO for federal lands or New Mexico SHPO for New Mexico State Trust Lands for an expedited 15 calendar day review and comment period. Work may commence upon written authorization by BIA, in consultation with the applicable federal land manager and New Mexico SHPO. In the event that no response is received from the BIA after 15 days, PNM may assume that the BIA concurs with the survey results and proceed with the activity.

**Positive Survey.** If cultural resources are identified during the survey, they will be recorded on applicable forms. PNM will submit a written report via email or as hard copy, following applicable guidelines, to the BIA and the applicable federal land manager for federal lands for review. The BIA will send the report to the New Mexico SHPO for a thirty (30) calendar day review and comment period. The BIA, in consultation with the applicable federal land manager and New Mexico SHPO, will determine the NRHP eligibility of any newly recorded cultural resources in the APE in accordance with 36 CFR § 800.4 (c), the potential effects of the activity in accordance with 36 CFR § 800.4 (d), where historic properties may be affected, and the determinations of any impacts of the proposed activity (as outlined in 36 CFR § 800.5) within thirty (30) calendar days of receipt

of the report. The BIA, in consultation with applicable federal land manager and New Mexico SHPO, will also decide any necessary mitigation measures, the implementation of which will be required prior to work proceeding at the activity location. The Project Proponent may proceed with the activity upon written approval by BIA, in consultation with the federal land manager and New Mexico SHPO. If no response from the applicable federal land manager and/or New Mexico SHPO is received within thirty (30) calendar days, PNM may proceed with the activity provided PNM follows the management recommendations outlined in the report.

### **C. Emergency Maintenance and Response**

A number of events can occur within the Project APE that require a rapid response in order to safeguard facilities, provide for protection of wildlife habitat, protect public and private property, and prevent serious injury or loss of human life. These include, but are not limited to: structural or mechanical failure; transmission outages due to maintenance conditions; fire; wind and electrical storms; flood; and earthquake. The emergency maintenance and response procedure is designed to be implemented in the event such events occur.

Emergency maintenance typically commences within twenty-four (24) hours of discovery. After the emergency work is completed, if the activity results in impacts to cultural resources, PNM will follow the record-keeping and reporting procedures for areas previously surveyed and found to have cultural resources within 50 feet of the activity, as outlined in Stipulation VIII(B)(2)(a)(ii). PNM's archaeologist will be notified of the need for emergency maintenance work within twenty-four (24) hours.

## **Stipulation IX. Cultural Resources Awareness Training**

APS and PNM will develop cultural resources awareness training and ensure that appropriate APS and PNM personnel complete that training. APS will consult with the BIA, NNTHPO, HCPO, and Arizona SHPO in developing the training. PNM will consult with the BIA, NNTHPO, BLM, NPS, Zia Pueblo, and New Mexico SHPO in developing the training.

## **Stipulation X. Unanticipated Discoveries During Operation and Maintenance of the Project**

### **A. Unanticipated Discoveries of Archaeological Resources**

1. If the discovery occurs within the Navajo Nation jurisdiction or on allotments owned by individual Navajo members, the *Navajo Nation Guidelines for Discovery Situations*, as listed in Attachment H pages H-1 through H-6, will

be followed by the NNTHPO, BIA Navajo Region, and APS or PNM, as appropriate.

2. If the discovery occurs within the Hopi Indian Reservation, guidance in Attachment H, page H-8, will be followed by the HCPO, BIA Western Region, Arizona SHPO, and APS.
3. If the discovery occurs within Zia Pueblo lands, guidance from Section 106 of the NHPA and ARPA, as listed in Attachment H pages H-10 and H-11, will be followed by the Zia Pueblo, BIA Southwest Region, New Mexico SHPO, and PNM.
4. If the discovery occurs within federal lands, guidance from Section 106 of the NHPA and ARPA, as listed in Attachment H pages H-12 and H-13, will be followed by the federal land manager, BIA, New Mexico SHPO, and PNM.
5. If the discovery occurs within New Mexico State or private lands, the New Mexico Cultural Properties Act (New Mexico Statute Part 18-6-1 through 18-6-17, as amended through 2005) and implementing regulation 4.10.8, New Mexico Administrative Code (NMAC), as listed in Attachment H pages H-15 and H-16, will be followed by the New Mexico SHPO, BIA, and PNM.

## **B. Unanticipated Discovery of Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony**

When an unmarked human burial or unregistered grave is encountered during operation and maintenance activities, the Project Proponent will ensure that any and all human remains, sacred objects, and objects of cultural patrimony will be treated with dignity and respect.

1. Discovery of Human Remains, Funerary Objects, and Objects of Cultural Patrimony Within the Jurisdiction of the Navajo Nation and on Allotments Owned by Individual Navajo members

Upon discovery, APS or PNM will comply with applicable laws and regulations, including, but not limited to, Navajo Nation Policy for the Protection of Jishchaa', Navajo Nation CRPA (CMY-19-88), Navajo Nation Policy for the Disposition of Cultural Resource Collections, and Navajo Nation Guidelines for Discovery Situations, as summarized in Attachment H pages H-6 and H-7.

2. Hopi Indian Reservation

Upon discovery, APS will comply with applicable laws and regulations including NAGPRA (25 USC 3001[3]; 43 CFR § 10), ACHP Policy

Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007), and any guidance provided by the HCPO. Policies and guidelines are provided in Attachment H page H-9.

3. Zia Pueblo Lands

Upon discovery, PNM will comply with applicable laws and regulations including NAGPRA (25 USC 3001[3]; 43 CFR § 10), ACHP Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007), and any guidance provided by the Zia Pueblo. Policies and guidelines are provided in Attachment H page H-11.

4. Federal Lands

Upon discovery, PNM will comply with applicable laws, regulations, and guidelines including NAGPRA (25 USC 3001[3]; 43 CFR § 10), and ACHP Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007). Policies and guidelines are provided in Attachment H page H-13 and H-14.

5. New Mexico State or Private Lands

Upon discovery, PNM will comply with the New Mexico Cultural Properties Act (N.M. Stat. Part 18-6-11.2, as amended through 2005) and implementing regulation 4.10.11, NMAC. The ACHP Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007) shall also be followed. Policies and guidelines are provided in Attachment H pages H-16 and H-17.

## **Stipulation XI. Curation**

1. The BLM and NPS may curate any artifacts, materials, and records resulting from archaeological identification and mitigation conducted on federal lands under their jurisdiction in accordance with 36 CFR Part 79 and NAGPRA (25 USC 3001[3]; 43 CFR Part 10). Human remains and associated funerary objects shall not be curated.
2. On land controlled or owned by the BLM and NPS, those agencies will determine the disposition of human burials, human remains, and funerary objects in accordance with applicable federal law and in consultation with affected tribes and New Mexico SHPO, if discovery is within an archaeological site.

3. Any artifacts, materials, and records recovered from BLM jurisdiction will be curated at the expense of PNM.
4. PNM will return all artifacts recovered from private lands, except human remains and associated funerary objects, to the respective landowner after analysis is complete. For collections from private lands, PNM will encourage the private landowner to donate collections to an approved curation facility. PNM shall pay all required curation fees associated with the donation.
5. All artifacts recovered from lands owned, controlled, or operated by the State of New Mexico, including associated records and documentation, shall be curated at the Museum of New Mexico, Museum of Indian Arts and Culture, at the expense of PNM.
6. On Tribal Trust Land, the tribe, as owner of the artifacts, shall determine the final disposition of the artifacts and records. Should the tribe prefer that the artifacts be curated at a museum or repository, APS or PNM, as appropriate, shall ensure these items are transported and accessioned at the selected institution.
7. On BIA lands acquired by Public Land Order 2198, which are sometimes referred to as BIA Administrative Lands, the artifacts become the property of the U.S. Government (BIA) and shall be curated in accordance with 36 CFR Part 79 at the expense of APS.
8. NNTHPO may curate any artifacts, materials, and records resulting from archaeological identification and mitigation conducted within Navajo Nation jurisdiction in accordance with applicable laws and regulations, including Navajo Nation Policy for the Protection of Jishchaa', Navajo Nation CRPA (CMY-19-88), and Navajo Nation Policy for the Disposition of Cultural Resource Collections.
9. The HCPO may curate any artifacts, materials, and records resulting from archaeological identification and mitigation conducted within Hopi Indian Reservation under their jurisdiction in accordance with applicable laws and regulations at the expense of APS.
10. If the work is on Allotted Indian Land held in trust for the allottee and their heirs or otherwise subject to a restraint on alienation (Allotted Indian Land) and the owner(s) wants the artifacts, the artifacts (except for human remains, funerary objects, sacred objects, and objects of cultural patrimony) will be given to the owner(s) after a reasonable study time.
11. If the work is on Allotted Indian Land and the owner(s) wants the artifacts in order to sell them, BIA will not give the artifacts to the allotted land owner, and instead will ask the Navajo Nation as to disposition of the artifacts after any study is completed. 25 CFR § 262.8(c) gives authority to withhold artifacts if an agency believes the landowners will sell them.

12. If the work is on Allotted Indian Land and the owner(s) does not want the artifacts, the Navajo Nation will be consulted as to disposition of artifacts after study.
13. If artifacts are recovered on Allotted Indian Land that is located outside the jurisdiction of the Navajo Nation and the owner(s) does not want the artifacts, the BIA will consult with various tribes and the applicable SHPO/THPO as to the disposition after study. In New Mexico, if the tribe declines, the artifacts, materials, and records shall be curated at the Museum of Indian Arts and Culture, at the expense of APS or PNM, as appropriate.

## **Stipulation XII. Reporting**

1. The Project Proponents will prepare a summary matrix of activities related to the Undertaking within the APE, including activities associated with identification, evaluation, mitigation, and emergency maintenance of historic properties as listed in Attachment C. The summary matrix will be completed yearly by January 25 in each year (until termination of this Agreement as outlined in Stipulation XVIII) and submitted to the BIA. The BIA will forward the summary matrix to the Consulting Parties for review and comment. Consulting Parties will have thirty (30) days to comment on the summary matrix and respond to the BIA. APS or PNM will address comments and will submit a final summary matrix to the BIA. The BIA will forward the final summary matrix to Consulting Parties.
2. APS will provide a summary matrix of all activities related to the Undertaking within the Hopi Indian Reservation for which consultation was not conducted. The summary matrix will be completed yearly by January 25 in each year (until termination of this Agreement as outlined in Stipulation XVIII) and submitted to the BIA and HCPO for concurrent thirty (30) day review. The BIA will forward the summary matrix to the Arizona SHPO for thirty (30) day review. APS will address comments and will submit a final summary matrix to the BIA and HCPO. The BIA will forward the final summary matrix to the Arizona SHPO.
3. Every two years following the execution of this Agreement until it expires or is terminated, BIA with the assistance of the Project Proponents, BLM, EPA, OSMRE, and ACHP, as necessary, will provide the SHPOs, consulting Indian tribes, and other Consulting Parties a Progress Report summarizing the work carried out pursuant to its terms. The Progress Report will be submitted by March 1 of each bi-annum. Such report will include any scheduling changes proposed, any issues encountered, and any disputes and objections received in the efforts to carry out the terms of this Agreement. The BIA will maintain and update a list of current contact information for the SHPOs, consulting

- Indian tribes, and other Consulting Parties and will be distributed in each report. The Consulting Parties will have thirty (30) calendar days to review and comment on the report unless otherwise extended by the BIA. The BIA will address comments and will submit a final Progress Report to the Consulting Parties within thirty (30) calendar days of comments received.
4. Every two years, with assistance by APS and PNM, the BIA will also organize a meeting for all Consulting Parties after the comment period has ended and prior to the completion of the final report.
  5. APS and PNM shall address timely comments and recommendations submitted by the BIA and other consulting parties on the Progress Report and will submit a final report. Upon acceptance by the BIA, the final report will be submitted by the BIA to the NNTHPO, HCPO, SHPOs, and other consulting parties.
  6. Other reports associated with the operations and maintenance of the power plant and Transmission Lines will follow the protocols set forth in Stipulations V, VI, VII, and VIII.

### **Stipulation XIII. No Waiver of Rights or Obligations between APS and Navajo Nation**

1. This Agreement is intended strictly to satisfy the federal agencies' Section 106 responsibilities for this Undertaking. Nothing in this Agreement shall be deemed a waiver of any rights or obligations of any Party under any existing leases or ROWs, including but not limited to the covenant not to regulate granted to APS. APS, through this Agreement, voluntarily agrees to work with the NNTHPO to determine protocols for the identification, evaluation, and treatment of historic properties that are mutually acceptable to the NNTHPO and APS, and is intended to establish a practical substitute for Navajo Nation jurisdiction.
2. The Consulting Parties agree that the acts or omissions of the Consulting Parties pursuant to this Agreement have no effect on the scope, validity, or effect of the "covenant not to regulate", and do not constitute a waiver, abandonment, forfeiture, or relinquishment of APS's rights to invoke the "covenant not to regulate" either during pendency of or upon expiration or termination of this Agreement.
3. The Consulting Parties further agree that this Agreement and any actions taken pursuant to this Agreement may not be used, or offered or entered into evidence, in any proceeding relating to the jurisdictional authority or lack of jurisdictional authority of the Navajo Nation over APS, including without limitation any proceeding concerning the scope, validity, or effect of the covenant not to regulate.

## **Stipulation XIV. Dispute Resolution**

1. Should any Signatory or Invited Signatory to the Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, that party shall promptly notify BIA with written notice and a recommended resolution. The BIA will consult with such party to resolve the objection within thirty (30) calendar days. If the BIA determines that such objection cannot be resolved, the BIA will:
  - a. Forward all documentation relevant to the dispute, including the BIA's proposed resolution, to the ACHP. The ACHP will provide the BIA with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BIA will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and Invited Signatories received within thirty (30) calendar days of BIA forwarding the documentation relevant to the dispute, and provide them with a copy of this written response. The BIA will then proceed according to its final decision.
  - b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, the BIA is responsible for making a final decision on the dispute and proceeding accordingly. Prior to reaching such a final decision, the BIA will prepare a written response that takes into account any timely comments regarding the dispute from the Signatories, Invited Signatories, and Concurring Parties, and provide them and the ACHP with a copy of such written response.
2. Any dispute pertaining to the NRHP eligibility of historic properties or cultural resources covered by this Agreement will be addressed by the BIA per 36 CFR § 800.4(c)(2).
3. The appropriate lead federal agencies are responsible for carrying out all other actions subject to the terms of this Agreement that are not the subject of the dispute.

## **Stipulation XV. Effective Date**

This Agreement shall take effect upon its execution and issuance of the ROD for the Project by OSMRE.

## **Stipulation XVI. Duration**

1. This Agreement expires twenty-five (25) years from its effective date unless extended by written agreement of the Signatories and Invited Signatories prior to expiration.
2. One year prior to expiration of this Agreement, the BIA shall consult with the other Signatories and Invited Signatories to reconsider the terms of the Agreement and, if applicable, have the Signatories extend the term of the originally executed Agreement. Extensions are treated as amendments in accordance with Stipulation XVII. Signatories will notify the Invited Signatories and Concurring parties as to the course of action they will pursue.

## **Stipulation XVII. Amendment**

1. Any Signatory or Invited Signatory to this Agreement may propose in writing to the other Signatories and Invited Signatories that it be amended. The Signatories and Invited Signatories will consult for no more than thirty (30) calendar days in an effort to reach agreement on an amendment. Any amendment will be effective on the date it is signed by all of the Signatories.
2. Modifications, additions or deletions to the Historic Properties Treatment Plan(s) shall not require an amendment to this Agreement.

## **Stipulation XVIII. Termination**

1. Only Signatories and Invited Signatories may terminate this Agreement in its entirety. If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that party will immediately consult with the other parties to attempt to develop an amendment per Stipulation XVII. If within thirty (30) calendar days an amendment cannot be reached, any Signatory, Invited Signatory or Concurring Party may terminate its participation in the Agreement upon written notification to the other Signatories, Invited Signatories, and Concurring Parties.
2. Termination by the NNTHPO, HCPO, Zia Pueblo, or an individual SHPO shall only terminate the application of this Agreement within the jurisdiction of that party.
3. If the Agreement is terminated in its entirety, the BIA shall either seek to negotiate a memorandum of agreement under 36 CFR § 800.6(c) or request, take into account, and respond to the comments of the ACHP in accordance with 36 CFR § 800.7(a). Following consultation with the ACHP, the BIA will notify the Signatories, Invited Signatories, and Concurring Parties as to the course of action it will pursue.

4. If the Agreement is terminated, each federal agency will be responsible for completion of Section 106 for any undertaking within their jurisdiction.

### **Stipulation XIX. Coordination with Other Federal Reviews**

In the event that APS or PNM applies for federal funding or approvals and the Undertaking remains unchanged, such funding or approving agency may comply with Section 106 of the NHPA by agreeing in writing to the terms of this Agreement and notifying and consulting with the applicable federal or state agency and consulting party. Any necessary amendments will be considered in accordance with Stipulation XVII.

### **Stipulation XX. Scope of the Agreement**

This Agreement is limited in scope to actions that will facilitate the operation and maintenance of the FCPP, ancillary facilities, and Transmission Lines and is entered into solely for the purpose of taking into account the effects of those aspects of the Undertaking on historic properties.

**EXECUTION** of this Agreement by OSMRE, BIA, BLM, EPA, NPS, NNTHPO, HCPO, Zia Pueblo, ACHP, New Mexico SHPO, Arizona SHPO, APS, and PNM and implementation of its terms evidence that OSMRE, BIA, BLM, EPA, and NPS have taken into account the effects of continued operations at the FCPP, associated Transmission Lines, and ancillary facilities on historic properties and afforded the ACHP an opportunity to comment.

**SIGNATORY PARTY**

**OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT**

By Erwin J. Barchenger Date 01/26/2015  
Regional Director, Western Region

**SIGNATORY PARTY**

**BUREAU OF INDIAN AFFAIRS**

By  Date 2/17/2015

Sharon A. Pinto, Regional Director, Navajo Region

**SIGNATORY PARTY**

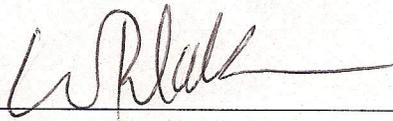
**BUREAU OF INDIAN AFFAIRS**

By  Date 1/7/15

Bryan Bowker, Regional Director, Western Region

**SIGNATORY PARTY**

**BUREAU OF INDIAN AFFAIRS**

By 

Date 22 Jan 2015

William T. Walker, Regional Director, Southwest Region

**SIGNATORY PARTY**

**NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER**

By  Date 12-23-14

Ron Maldonado, Acting Tribal Historic Preservation Officer

**SIGNATORY PARTY**

**HOPI TRIBE**

By Herman G. Honanie Date 1/22/15  
Herman G. Honanie, Chairman

**SIGNATORY PARTY**

**PUEBLO OF ZIA**

By David Pino Date 12.19.14

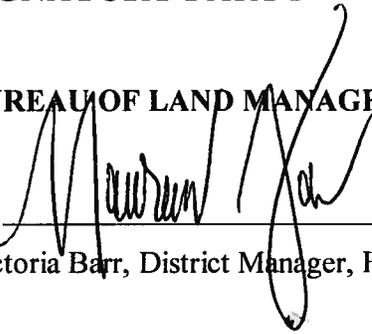
David Pino, Governor

FCPP-NMMP. Project: FCPP PA  
OSMRE Received 19 DEC 2014  
OSMRE Received by  
Jeremy IFFF  
Page should read "48"  
but reads "51" due  
to table of contents  
page numbers  
added  
when printed

**SIGNATORY PARTY**

**BUREAU OF LAND MANAGEMENT**

By



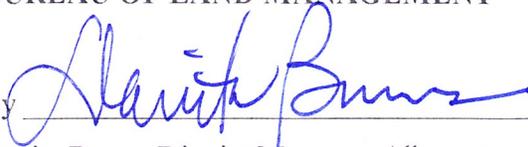
Date

01/09/15

for Victoria Barr, District Manager, Farmington District

**SIGNATORY PARTY**

**BUREAU OF LAND MANAGEMENT**

By  Date 12/23/2014  
Danita Burns, District Manager, Albuquerque District

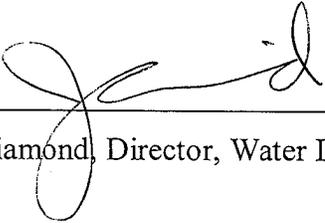
**SIGNATORY PARTY**

**NATIONAL PARK SERVICE**

By Dennis A. Vasquez Date 1/7/2015  
Superintendent, Petroglyph National Monument

**SIGNATORY PARTY**

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

By  Date 1/7/2015  
Jane Diamond, Director, Water Division, Pacific Southwest Office

**SIGNATORY PARTY**

**NEW MEXICO STATE HISTORIC PRESERVATION OFFICER**

By  \_\_\_\_\_ Date 12/23/14  
Jeff Pappas, New Mexico State Historic Preservation Officer

**SIGNATORY PARTY**

**ARIZONA STATE HISTORIC PRESERVATION OFFICER**

By James W. Garrison . Date 4/2/15  
James W. Garrison, Arizona State Historic Preservation Officer

**SIGNATORY PARTY**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By  Date 2/23/15

*for* John M. Fowler, Executive Director

**INVITED SIGNATORY PARTY**

**ARIZONA PUBLIC SERVICE COMPANY**

By Ann C. Becker Date 1-16-2015

Ann Becker, Vice President, Environment and Sustainability

**INVITED SIGNATORY PARTY**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

By Maureen Gannon Date 1/08/2015  
Maureen Gannon, Executive Director, Environmental Services, PNM Resources

**INVITED SIGNATORY PARTY**

**NEW MEXICO STATE LAND OFFICE**

By Ray Powell Date 12/29/14  
Ray Powell, M.S., D.V.M., Commissioner of Public Lands

## **ATTACHMENTS**

**Attachment A: Project Maps**

**Attachment B: List of Indian Tribes Invited by Lead Federal Agency to Participate in Consultation and Consultation Record**

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

**Attachment D: Agency, Consulting Tribes, and Proponent Contact List**

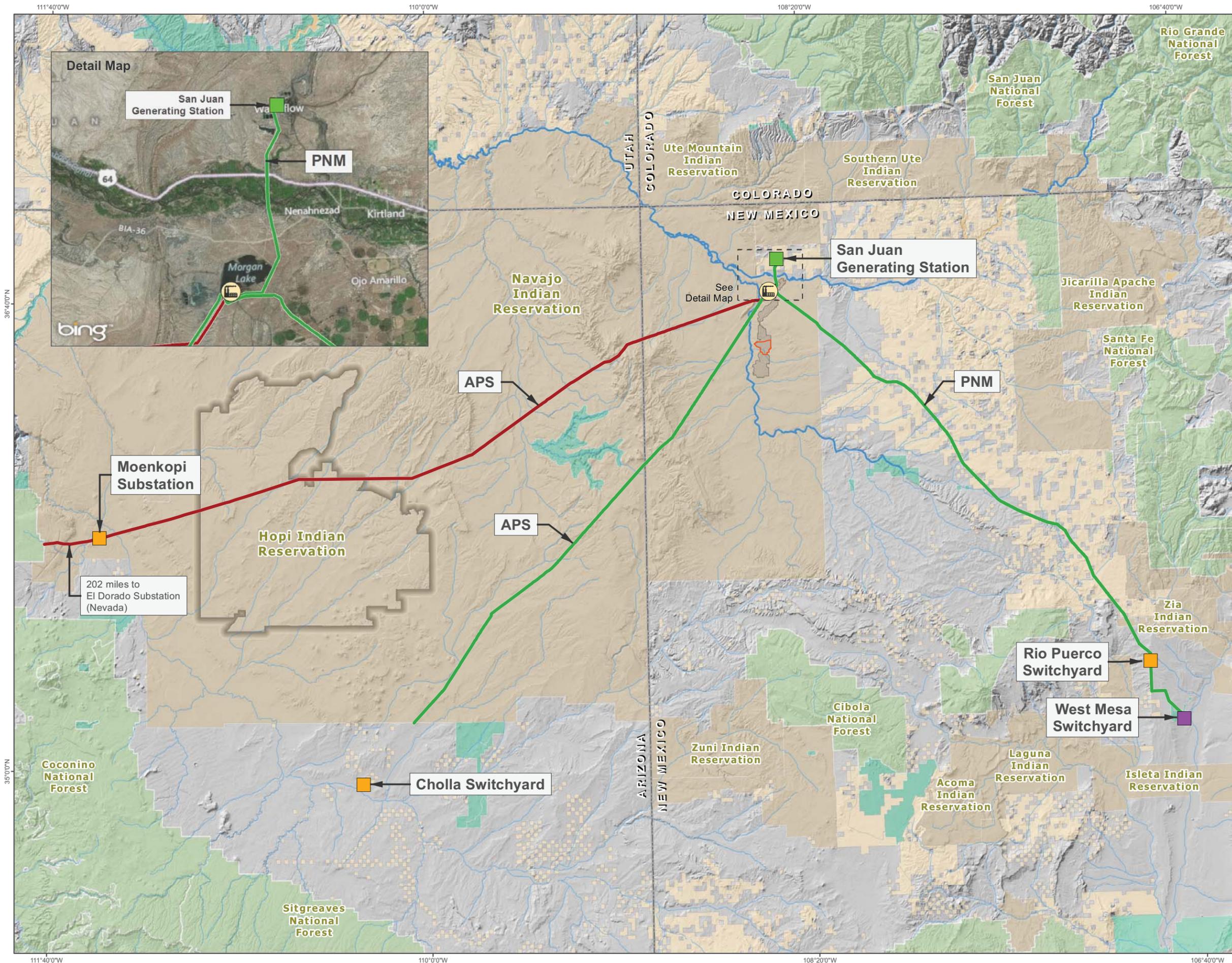
**Attachment E: Definitions**

**Attachment F: Regulations and Guidelines Referenced**

**Attachment G: List of Areas to be Surveyed under the PA**

**Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols**

Project Location



PROJECT FACILITIES

- Four Corners Power Plant 
- Generating Station 
- Substation 
- Switchyard 

PROJECT BOUNDARIES

- Pinabete Mine Permit Boundary 
- Navajo Mine Lease Areas 

TRANSMISSION LINES

- 345kV 
- 500kV 

FEDERAL MANAGING GROUP

- Forest Service 
- Bureau of Land Management 
- Fish and Wildlife Service 
- National Park Service 
- Bureau of Indian Affairs 
- Bureau of Reclamation 

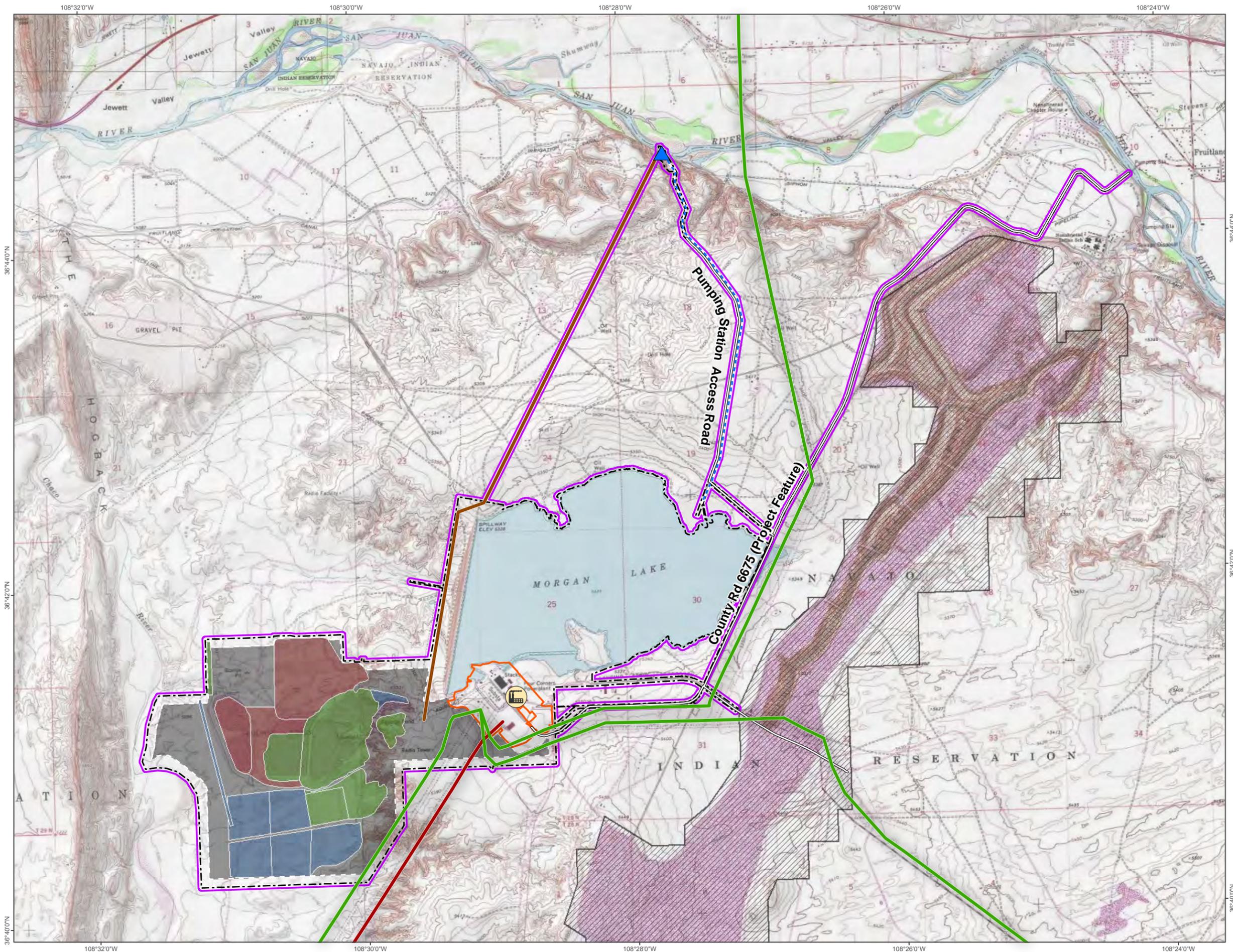
Note: The FCPP to Cholla Switchyard transmission line consists of two parallel transmission lines that occupy the same right-of-way for approximately 85 miles before separating into two rights-of-way for another 40 miles and converging into a single right-of-way for 10 miles before leaving the Navajo Nation.



# Four Corners Power Plant and Navajo Mine Energy Project

## AFFECTED ENVIRONMENT

**Figure 4.4-2**  
Area of Potential Effect  
Four Corners Power Plant



### PROJECT FACILITIES

- Four Corners Power Plant 
- Pumping Station 
- Pumping Station Pipeline 

### PROJECT BOUNDARIES

- Four Corners Lease Boundary 
- Navajo Mine Lease Area 
- Power Plant Fence Line 

### TRANSMISSION LINES

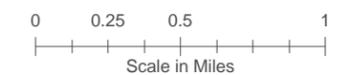
- 345kV 
- 500kV 
- 69kV - Pumping Station to Power Plant 

### AREAS OF POTENTIAL EFFECT

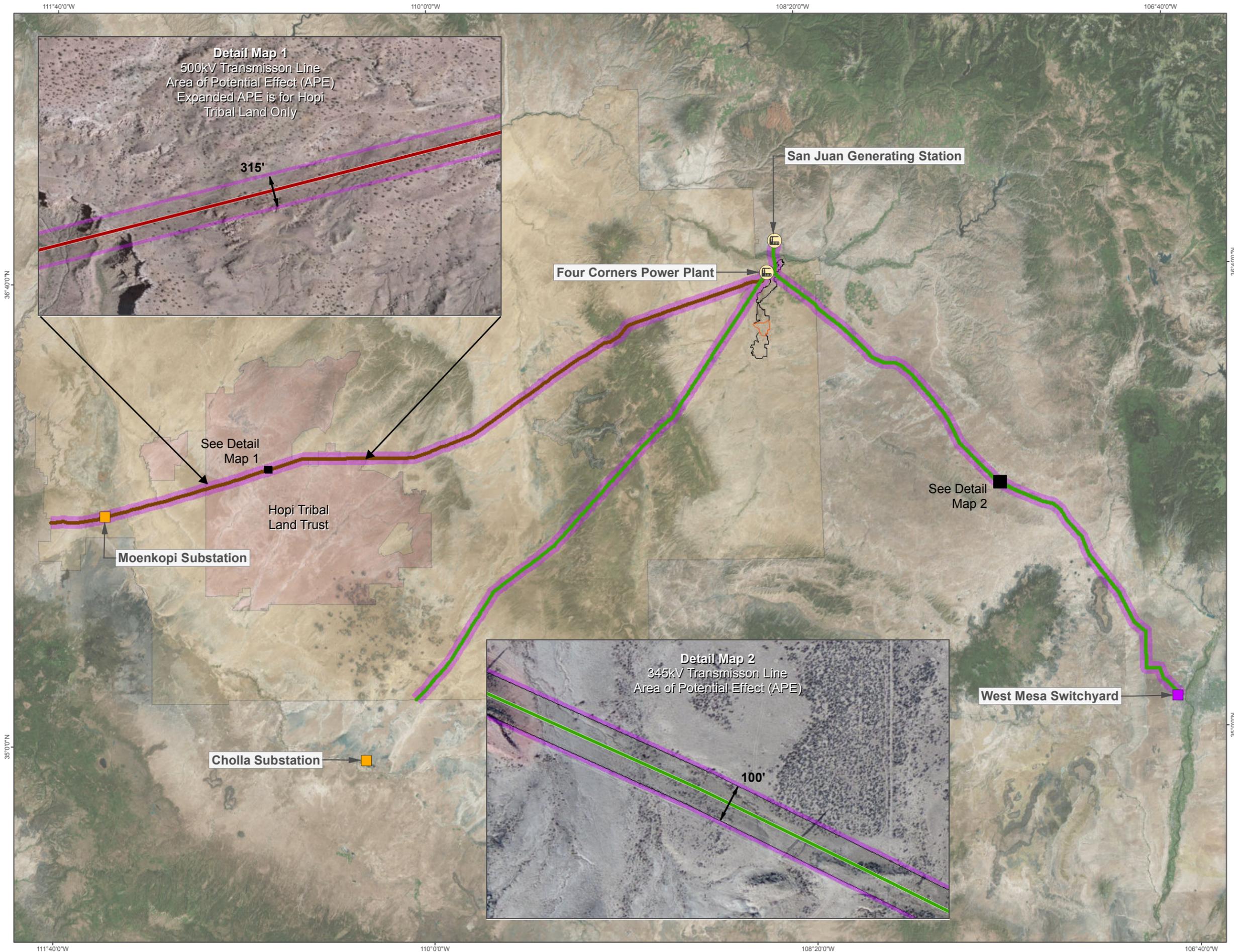
- Area of Potential Effect 

### ASH FACILITIES

- Existing Active Facility 
- Existing Inactive Facility 
- Future Facility 
- Future Ash Disturbance Area 



Area of Potential Effect  
Transmission Lines



PROJECT FACILITIES

- Four Corners Power Plant
- Substation
- Switchyard

PROJECT BOUNDARIES

- Navajo Mine Lease Area
- Proposed Pinabete Permit Boundary
- Area of Potential Effect

TRANSMISSION LINES

- 345kV
- 500kV

OTHER FEATURES

- County Boundaries
- Hopi Tribal Trust Lands
- Navajo Nation Tribal Trust Lands



## Attachment B: List of Indian Tribes Invited by Lead Federal Agency to Participate in Consultation

INDIAN TRIBES INVITED TO PARTICIPATE IN CONSULTATION	
1	Comanche Nation
2	Fort McDowell Yavapai Nation
3	Havasupai Tribe
4	Hopi Tribe
5	Hualapai Indian Tribe
6	Jicarilla Apache Nation
7	Kaibab of Paiute Indians
8	Kewa Pueblo, formerly Santo Domingo Pueblo
9	Kiowa Tribe of Oklahoma
10	Las Vegas Tribe of Paiute Indians
11	Moapa Band of Paiute Indians
12	Navajo Nation
13	Ohkay Owingeh, formerly Pueblo of San Juan
14	Paiute Indian Tribe of Utah (Cedar, Kanosh, Koosharem, Indian Peaks, and Shivwits Bands)
15	Pueblo of Acoma
16	Pueblo of Cochiti
17	Pueblo of San Ildefonso
18	Pueblo of Isleta
19	Pueblo of Jemez
20	Pueblo of Laguna
21	Pueblo of Nambe
22	Pueblo of San Felipe
23	Pueblo of Sandia
24	Pueblo of Santa Ana
25	Pueblo of Santa Clara
26	Pueblo of Tesuque
27	Pueblo of Zia
28	Ramah Navajo Chapter
29	San Carlos Apache Tribe
30	San Juan Southern Paiute Tribe of Arizona
31	Southern Ute Indian Tribe
32	Ute Mountain Tribe of the Ute Mountain Indian Reservation
33	White Mountain Apache Tribe of the Fort Apache Reservation
34	Ysleta Del Sur Pueblo
35	Zuni Pueblo

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

**TABLE C-1. ARCHAEOLOGICAL HISTORIC PROPERTIES IDENTIFIED IN FCPP AREA**

SITE #	LAND OWNERSHIP	DESCRIPTION	AFFILIATION	NRHP DETERMINATION BY OSMRE	THPO CONCURRENCE WITH OSMRE FINDINGS
NM-H-20-12	Navajo Nation	Previously recorded structural site	Anasazi	Eligible	Pending
NM-H-20-13	Navajo Nation	Previously recorded sherd and lithic scatter	Anasazi	Unevaluated	Pending
NM-H-20-14	Navajo Nation	Previously recorded artifact scatter	Anasazi	Eligible	Pending
NM-H-20-15	Navajo Nation	Previously recorded sheepherding camp	Navajo	Eligible	Pending
NM-H-20-16	Navajo Nation	Previously recorded habitation	Anasazi	Eligible	Pending
NM-H-20-17	Navajo Nation	Previously recorded feature	Anasazi	Eligible	Pending
NM-H-20-18	Navajo Nation	Previously recorded field house	Anasazi	Eligible	Pending
NM-H-20-19	Navajo Nation	Previously recorded field house	Anasazi	Eligible	Pending
NM-H-20-21	Navajo Nation	Previously recorded structural site and cairns	Anasazi/ Late Historic/ Navajo	Eligible	Pending
NM-H-20-62	Navajo Nation	Previously recorded multiple residence	Anasazi	Eligible	Pending
NM-H-20-128	Navajo Nation	Artifact scatter	Anasazi	Unevaluated	Pending
NM-H-20-152	Navajo Nation	Hogan	Navajo	Eligible	Pending
NM-H-20-154	Navajo Nation	Previously recorded multiple residence	Anasazi	Eligible	Pending
NM-H-20-155	Navajo Nation	Previously recorded residence	Anasazi	Eligible	Pending
NM-H-21-156	Navajo Nation	Previously recorded possible hearth	Unknown	Unevaluated	Pending

\*Table to be updated based on ongoing consultation with NNTHPO.

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

**TABLE C-2. ARCHAEOLOGICAL HISTORIC PROPERTIES IDENTIFIED IN ROW FOR APS 500-KV TO MOENKOPI SUBSTATION**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
AZ-I-25-121	Navajo Nation	Artifact scatter with feature	Anasazi	Eligible	Pending
AZ-I-25-124	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-38-46	Navajo Nation	Previously Recorded Habitation	Anasazi/ Navajo	Eligible	Pending
AZ-I-38-47	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-38-50	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-38-51	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-38-52	Navajo Nation	Sweat lodge	Navajo	Eligible	Pending
AZ-I-39-137	Navajo Nation	Artifact scatter	Anasazi	Unevaluated	Pending
AZ-I-39-138	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-39-139	Navajo Nation	Artifact scatter with features	Anasazi	Eligible	Pending
AZ-I-39-140	Navajo Nation	Artifact scatter with features	Navajo	Eligible	Pending
AZ-I-39-141	Navajo Nation	Artifact scatter	Basketmaker/ Navajo	Unevaluated	Pending
AZ-I-44-48	Navajo Nation	Sweat lodge with features and artifact scatter	Unknown/ Navajo	Eligible	Pending
AZ-I-44-49	Navajo Nation	Artifact scatter with features	Anasazi	Eligible	Pending
AZ-I-44-50	Navajo Nation	Artifact scatter with features	Anasazi/ Navajo	Eligible	Pending
AZ-I-44-52	Navajo Nation	Sweat lodge and artifact scatter with features	Anasazi/ Navajo	Eligible	Pending
AZ-I-44-53	Navajo Nation	Habitation	Anasazi/ Navajo	Eligible	Pending
AZ-I-44-54	Navajo Nation	Sweat lodge	Navajo	Eligible	Pending
AZ-I-44-55	Navajo Nation	Habitation	Anasazi/ Navajo	Eligible	Pending

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
AZ-I-44-56	Navajo Nation	Habitation	Anasazi/ Navajo	Eligible	Pending
AZ-I-44-58	Navajo Nation	Lithic scatter	Unknown	Unevaluated	Pending
AZ-I-44-59	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-44-60	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-44-62	Navajo Nation	Habitation	Anasazi/ Navajo	Eligible	Pending
AZ-I-44-63	Navajo Nation	Sweat lodge	Navajo	Eligible	Pending
AZ-I-44-64	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-44-65	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-44-66	Navajo Nation	Sweat lodge	Navajo	Eligible	Pending
AZ-I-44-67	Navajo Nation	Sweat lodge	Navajo	Eligible	Pending
AZ-I-44-68	Navajo Nation	Habitation	Navajo/ Unknown	Eligible	Pending
AZ-I-45-101	Navajo Nation	Artifact scatter with features	Anasazi/ Navajo	Unevaluated	Pending
AZ-I-45-102	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-45-103	Navajo Nation	Artifact scatter with feature	Unknown	Unevaluated	Pending
AZ-I-45-104	Navajo Nation	Artifact scatter with feature	Archaic/ Anasazi	Unevaluated	Pending
AZ-I-45-105	Navajo Nation	Flaked stone quarry with features	Unknown/ Navajo	Unevaluated	Pending
AZ-I-45-106	Navajo Nation	Artifact scatter with features	Anasazi	Eligible	Pending
AZ-I-45-107	Navajo Nation	Artifact scatter	Anasazi	Unevaluated	Pending
AZ-I-51-1	Navajo Nation	Habitation	Navajo/ Anasazi	Eligible	Pending
AZ-I-52-78	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-63-66	Navajo Nation	Artifact scatter with features	Anasazi	Eligible	Pending

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
AZ-I-64-67	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-I-64-68	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-J-57-100	Navajo Nation	Artifact scatter with feature	Anasazi	Unevaluated	Pending
AZ-J-57-101	Navajo Nation	Habitation and sweat lodge	Anasazi/ Navajo	Eligible	Pending
AZ-J-57-91	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-J-57-92	Navajo Nation	Artifact scatter with features	Basketmaker/ Anasazi/ Navajo	Eligible	Pending
AZ-J-57-93	Navajo Nation	Artifact scatter with features and sweat lodge	Navajo	Eligible	Pending
AZ-J-57-94	Navajo Nation	Artifact scatter with features	Anasazi/ Navajo	Eligible	Pending
AZ-J-57-95	Navajo Nation	Habitation	Anasazi/ Navajo	Eligible	Pending
AZ-J-57-96	Navajo Nation	Artifact scatter with feature	Basketmaker/ Anasazi/ Navajo	Eligible	Pending
AZ-J-57-98	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-J-57-99	Navajo Nation	Artifact scatter with features	Navajo	Unevaluated	Pending
AZ-J-58-125	Navajo Nation	Habitation and sweat lodge	Anasazi/ Navajo/ Unknown	Eligible	Pending
AZ-J-58-126	Navajo Nation	Artifact scatter	Navajo	Unevaluated	Pending
AZ-J-58-127	Navajo Nation	Habitation and sweat lodge	Anasazi/ Navajo	Eligible	Pending
AZ-J-58-128	Navajo Nation	Habitation	Anasazi/ Navajo/ Historic	Eligible	Pending
AZ-J-58-129	Navajo Nation	Sweat lodge	Navajo/ Unknown	Eligible	Pending
AZ-J-58-130	Navajo Nation	Sweat lodge	Navajo/ Unknown	Eligible	Pending
AZ-J-58-131	Navajo Nation	Sweat lodge	Navajo/ Unknown	Eligible	Pending
AZ-J-59-107	Navajo Nation	Artifact scatter with features and sweat lodges	Anasazi/ Navajo/ protohistoric-historic	Eligible	Pending
AZ-J-59-108	Navajo Nation	Artifact scatter	Anasazi	Unevaluated	Pending

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
AZ-J-59-109	Navajo Nation	Sweat lodge	Navajo/ Unknown	Eligible	Pending
AZ-K-53-4	Navajo Nation	Previously Recorded Road	Euro-American	Eligible	Pending
AZ-M-17-1	Navajo Nation	Lithic scatter	Unknown/ Prehistoric	Unevaluated	Pending
AZ-M-17-2	Navajo Nation	Flaked stone scatter	Unknown/ Prehistoric	Unevaluated	Pending
AZ-M-17-3	Navajo Nation	Flaked stone scatter	Unknown/ Prehistoric	Unevaluated	Pending
AZ-M-17-4	Navajo Nation	Lithic scatter	Early Archaic	Unevaluated	Pending
AZ-M-17-5	Navajo Nation	Artifact scatter with features	Early Archaic/ Patayan	Eligible	Pending
AZ-M-18-1	Navajo Nation	Artifact scatter	Archaic/ Patayan	Eligible	Pending
AZ-M-18-10	Navajo Nation	Lithic scatter	Unknown/ Prehistoric	Eligible	Pending
AZ-M-18-11	Navajo Nation	Artifact scatter	Patayan	Unevaluated	Pending
AZ-M-18-12	Navajo Nation	Artifact scatter	Patayan	Unevaluated	Pending
AZ-M-18-13	Navajo Nation	Flaked stone scatter	Unknown/ Prehistoric	Unevaluated	Pending
AZ-M-18-14	Navajo Nation	Artifact scatter	Patayan	Unevaluated	Pending
AZ-M-18-2	Navajo Nation	Lithic scatter	Unknown/ Prehistoric	Eligible	Pending
AZ-M-18-5	Navajo Nation	Artifact scatter	Unknown/ Prehistoric	Eligible	Pending
AZ-M-18-6	Navajo Nation	Artifact scatter	Archaic/ Patayan	Eligible	Pending
AZ-M-18-7	Navajo Nation	Flaked stone scatter	Archaic	Unevaluated	Pending
AZ-M-18-8	Navajo Nation	Lithic scatter	Unknown/ Prehistoric	Unevaluated	Pending
AZ-M-18-9	Navajo Nation	Artifact scatter	Late Archaic/ Patayan	Eligible	Pending
AZ-M-19-2	Navajo Nation	Flaked stone scatter	Archaic	Unevaluated	Pending
AZ-M-19-3	Navajo Nation	Flaked stone scatter	Unknown	Unevaluated	Pending

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
AZ-N-11-18	Navajo Nation	Artifact scatter	Unknown	Unevaluated	Pending
AZ-N-12-47	Navajo Nation	Artifact scatter	Anasazi	Unevaluated	Pending
AZ-N-12-58	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-N-12-60	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-N-12-61	Navajo Nation	Habitation	Anasazi	Eligible	Pending
AZ-N-12-62	Navajo Nation	Artifact scatter with features	Navajo	Unevaluated	Pending
AZ-N-12-64	Navajo Nation	Flaked stone scatter with features	Unknown/ Navajo	Unevaluated	Pending
AZ-N-13-16	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-N-13-17	Navajo Nation	Artifact scatter	Cohonina	Eligible	Pending
AZ-N-14-12	Navajo Nation	Artifact scatter with feature	Unknown	Eligible	Pending
AZ-N-14-13	Navajo Nation	Sweat lodge and corral	Navajo	Eligible	Pending
AZ-N-7-1	Navajo Nation	Artifact scatter	Anasazi	Unevaluated	Pending
AZ-Z-25-1	Navajo Nation	Lithic scatter	Unknown	Unevaluated	Pending
AZ-Z-25-2	Navajo Nation	Artifact scatter	Patayan	Eligible	Pending
AZ-Z-25-3	Navajo Nation	Flaked stone scatter	Unknown	Unevaluated	Pending
AZ-Z-25-4	Navajo Nation	Flaked stone scatter	Unknown	Unevaluated	Pending
NM-H-20-146	Navajo Nation	Sherd scatter with features	Anasazi	Eligible	Pending
NM-H-20-147	Navajo Nation	Previously Recorded Chacoan Great House Community	Anasazi/Navajo	Eligible	Pending
NM-H-20-148	Navajo Nation	Habitation	Anasazi	Eligible	Pending
NM-H-20-153	Navajo Nation	Artifact scatter with features	Anasazi	Eligible	Pending
NM-H-20-77	Navajo Nation	Previous Recorded Artifact scatter with feature	Anasazi	Eligible	Pending

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
NM-H-20-84	Navajo Nation	Previously Recorded Habitation	Navajo	Eligible	Pending
NM-H-20-90	Navajo Nation	Previously Recorded Artifact scatter with features	Anasazi	Eligible	Pending
NM-H-30-24	Navajo Nation	Artifact scatter with features	Archaic/ Anasazi/ Navajo	Unevaluated	Pending
NM-H-32-103	Navajo Nation	Habitation	Navajo	Eligible	Pending
NM-H-32-104	Navajo Nation	Rock art	Anasazi/ Navajo	Eligible	Pending
NM-H-32-105	Navajo Nation	Previously Recorded Habitation	Anasazi	Eligible	Pending
NM-I-25-122	Navajo Nation	Habitation	Navajo	Eligible	Pending
NM-I-25-123	Navajo Nation	Habitation	Anasazi/ Navajo	Eligible	Pending

\*Table to be updated based on ongoing consultation with NNTHPO.

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

**TABLE C-3. ARCHAEOLOGICAL HISTORIC PROPERTIES IDENTIFIED IN ROW OF APS 500-KV TO MOENKOPI SUBSTATION ON HOPI TRIBAL LANDS**

SITE #	LAND OWNERSHIP	DESCRIPTION	AFFILIATION	NRHP DETERMINATION BY OSMRE	SHPO CONCURRENCE WITH OSMRE FINDINGS
001-2009 <sup>1</sup>	Hopi	Habitation	Hisatsinom	Eligible	Pending
002-2009 <sup>1</sup>	Hopi	Habitation	Hisatsinom/ Navajo	Eligible	Pending
003-2009 <sup>1</sup>	Hopi	Artifact scatter	Hisatsinom	Eligible	Pending
004-2009 <sup>1</sup>	Hopi	Developed spring	Hopi	Eligible	Pending
005-2009 <sup>1</sup>	Hopi	Artifact scatter	Hisatsinom	Eligible	Pending
006-2009 <sup>1</sup>	Hopi	Hogan	Navajo	Eligible	Pending
007-2009 <sup>1</sup>	Hopi	Artifact scatter and feature	Navajo	Unevaluated	Pending
008-2009 <sup>1</sup>	Hopi	Artifact scatter	Hisatsinom	Eligible	Pending
009-2009 <sup>1</sup>	Hopi	Artifact scatter	Hisatsinom	Eligible	Pending
010-2009 <sup>1</sup>	Hopi	Artifact scatter	Hisatsinom	Unevaluated	Pending
011-2009 <sup>1</sup>	Hopi	Artifact scatter	Hisatsinom	Eligible	Pending
012-2009 <sup>1</sup>	Hopi	Artifact scatter and feature	Hisatsinom	Eligible	Pending
013-2009 <sup>1</sup>	Hopi	Artifact scatter	Hisatsinom	Unevaluated	Pending
014-2009 <sup>1</sup>	Hopi	Habitation	Hisatsinom/ Navajo	Eligible	Pending
015-2009 <sup>1</sup>	Hopi	Artifact scatter and feature	Hisatsinom	Unevaluated	Pending
016-2009 <sup>1</sup>	Hopi	Artifact scatter and feature	Hisatsinom	Unevaluated	Pending
017-2009 <sup>1</sup>	Hopi	Artifact scatter and feature	Basketmaker	Eligible	Pending
018-2009 <sup>1</sup>	Hopi	Rock art and feature	Unknown	Eligible	Pending
019-2009 <sup>1</sup>	Hopi	Rock art, features, and artifact scatter	Hisatsinom/ Hopi	Eligible	Pending
020-2009 <sup>1</sup>	Hopi	Artifact scatter and feature	Hisatsinom	Eligible	Pending

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>SHPO CONCURRENCE WITH OSMRE FINDINGS</b>
021-2009 <sup>1</sup>	Hopi	Habitation	Hisatsinom	Eligible	Pending
022-2009 <sup>1</sup>	Hopi	Rock shelter	Hisatsinom	Eligible	Pending
023-2009 <sup>1</sup>	Hopi	Artifact scatter	Hisatsinom	Eligible	Pending
024-2009 <sup>1</sup>	Hopi	Artifact scatter and feature	Hisatsinom	Eligible	Pending
025-2009 <sup>1</sup>	Hopi	Artifact scatter and habitation	Hisatsinom/ Navajo	Eligible	Pending
026-2009 <sup>1</sup>	Hopi	Rock art and artifact scatter	Hisatsinom	Eligible	Pending
027-2009 <sup>1</sup>	Hopi	Artifact scatter and feature	Hisatsinom	Eligible	Pending
028-2009 <sup>1</sup>	Hopi	Artifact scatter	Hisatsinom	Eligible	Pending
029-2009 <sup>1</sup>	Hopi	Habitation	Hisatsinom/ Navajo	Eligible	Pending

\*Table to be updated based on ongoing consultation with HCPO and Arizona SHPO.

<sup>1</sup> Identified in Hopkins et al. 2014 as a TCP.

Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)

**TABLE C-4. ARCHAEOLOGICAL HISTORIC PROPERTIES IDENTIFIED IN ROW OF APS 345-KV TO CHOLLA SWITCHYARD**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
AZ-I-57-32	Navajo Nation	Flaked stone scatter and features	Navajo	Eligible	Pending
AZ-I-57-33	Navajo Nation	Flaked stone scatter	Unknown	Eligible	Pending
AZ-O-56-8	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-O-56-9	Navajo Nation	Artifact scatter and feature	Anasazi	Eligible	Pending
AZ-P-07-60	Navajo Nation	Previously recorded habitation	Navajo	Eligible	Pending
AZ-P-11-45	Navajo Nation	Sweat lodge	Navajo	Eligible	Pending
AZ-P-12-68	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-P-12-69	Navajo Nation	Previously recorded multiple room blocks and kivas	Anasazi	Eligible	Pending
AZ-P-20-160	Navajo Nation	Sherd scatter	Anasazi	Eligible	Pending
AZ-P-20-161	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-P-20-162	Navajo Nation	Artifact scatter and feature	Anasazi	Eligible	Pending
AZ-P-20-163	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-P-21-79	Navajo Nation	Sweat lodge	Navajo	Eligible	Pending
AZ-P-21-80	Navajo Nation	Flaked stone scatter	Unknown	Eligible	Pending
AZ-P-29-65	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-P-30-16	Navajo Nation	Previously recorded artifact scatter and feature	Anasazi	Eligible	Pending
AZ-P-30-45	Navajo Nation	Sweat lodge	Navajo	Eligible	Pending
AZ-P-30-46	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-P-30-47	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
AZ-P-30-48	Navajo Nation	Artifact scatter and feature	Anasazi	Eligible	Pending
AZ-P-30-49	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-P-30-50	Navajo Nation	Artifact scatter and features	Anasazi	Eligible	Pending
AZ-P-34-10	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-P-34-9	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-P-47-1	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-P-48-10	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-P-48-11	Navajo Nation	Structure	Anasazi	Eligible	Pending
AZ-P-48-7	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
AZ-P-48-8	Navajo Nation	Habitation	Navajo	Eligible	Pending
AZ-P-48-9	Navajo Nation	Habitation	Navajo	Eligible	Pending
NM-H-143	Navajo Nation	Previously Recorded Habitation	Anasazi	Eligible	Pending
NM-H-20-98	Navajo Nation	Previously recorded artifact scatter	Anasazi	Eligible	Pending
NM-H-20-99	Navajo Nation	Previously recorded artifact scatter	Anasazi	Eligible	Pending
NM-H-21-209	Navajo Nation	Bread oven	Navajo	Eligible	Pending
NM-H-29-139	Navajo Nation	Previously recorded habitation with multiple room blocks, kivas, and artifact scatter	Anasazi	Eligible	Pending
NM-H-35-20	Navajo Nation	Habitation	Navajo	Eligible	Pending
NM-H-35-21	Navajo Nation	Artifact scatter and features	Anasazi/Navajo	Eligible	Pending
NM-H-35-22	Navajo Nation	Artifact scatter and features	Anasazi	Eligible	Pending
NM-H-35-23	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
NM-H-35-24	Navajo Nation	Previously recorded artifact scatter and features	Anasazi	Eligible	Pending
NM-H-35-26	Navajo Nation	Habitation	Navajo	Eligible	Pending
NM-H-35-27	Navajo Nation	Artifact scatter and features	Anasazi/ Navajo	Eligible	Pending
NM-H-35-28	Navajo Nation	Artifact scatter and feature	Anasazi/ Navajo	Eligible	Pending
NM-H-35-29	Navajo Nation	Rock art, artifact scatter, and features	Anasazi/ Navajo	Eligible	Pending
NM-H-35-30	Navajo Nation	Artifact scatter and features	Anasazi/ Navajo	Eligible	Pending
NM-H-47-125	Navajo Nation	Previously recorded habitation and artifact scatter	Anasazi	Eligible	Pending
NM-H-47-126	Navajo Nation	Artifact scatter	Anasazi	Eligible	Pending
NM-H-47-127	Navajo Nation	Habitation	Anasazi/ Navajo	Eligible	Pending
NM-H-47-128	Navajo Nation	Previously recorded habitation	Anasazi/ Navajo	Eligible	Pending
NM-H-47-129	Navajo Nation	Artifact scatter and features	Anasazi	Eligible	Pending
NM-H-47-130	Navajo Nation	Artifact scatter and feature	Anasazi	Eligible	Pending
NM-H-47-132	Navajo Nation	Sherd scatter	Anasazi	Eligible	Pending
NM-H-47-133	Navajo Nation	Artifact scatter and features	Anasazi/ Navajo	Eligible	Pending
NM-H-47-134	Navajo Nation	Previously recorded habitation	Anasazi/ Navajo	Eligible	Pending
NM-H-47-135	Navajo Nation	Artifact scatter and feature	Anasazi/ Navajo	Eligible	Pending
NM-H-47-32	Navajo Nation	Previously recorded artifact scatter and feature	Anasazi	Eligible	Pending
NM-H-47-94	Navajo Nation	Previously recorded habitation	Anasazi/ Navajo	Eligible	Pending
NM-H-49-116	Navajo Nation	Artifact scatter and features	Anasazi/ Navajo	Eligible	Pending
NM-H-49-117	Navajo Nation	Previously recorded hogan	Navajo	Eligible	Pending

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
NM-H-49-2	Navajo Nation	Previously recorded flaked stone scatter	Anasazi	Eligible	Pending
NM-H-50-180	Navajo Nation	Previously recorded room block, pit house, and trash mound	Anasazi	Eligible	Pending
NM-H-50-181	Navajo Nation	Artifact scatter and feature	Navajo	Eligible	Pending
NM-H-50-182	Navajo Nation	Sweat lodge	Navajo	Eligible	Pending
NM-H-50-183	Navajo Nation	Artifact scatter	Anasazi/ Navajo	Eligible	Pending
NM-H-50-184	Navajo Nation	Previously recorded habitation	Anasazi	Eligible	Pending
NM-I-57-35	Navajo Nation	Previously recorded habitation	Unknown/ Navajo	Eligible	Pending

\*Table to be updated based on ongoing consultation with NNTHPO.

Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)

**TABLE C-5. ARCHAEOLOGICAL HISTORIC PROPERTIES IDENTIFIED IN ROW FOR PNM FC TRANSMISSION LINE ON NAVAJO LANDS**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
NM-H-21-213	Navajo Nation	Residence	Navajo	Eligible	Pending
NM-H-21-214	Navajo Nation	Residence	Navajo	Eligible	Pending

\*Table to be updated based on ongoing consultation with NNTHPO.

Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)

**TABLE C-6. ARCHAEOLOGICAL HISTORIC PROPERTIES IDENTIFIED IN ROW FOR PNM FC TRANSMISSION LINE ON BLM, STATE, AND PRIVATE LANDS\***

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>SHPO CONCURRENCE WITH OSMRE FINDINGS</b>
LA 68213	Private (continues onto BLM and State)	Previously recorded Farmer's Mutual Ditch	Anglo	Eligible <sup>1,2</sup>	Concur <sup>1</sup>
LA 83965	Private (continues onto BLM and Navajo)	Previously recorded Jewett Valley Ditch	Anglo/Euro-American and Navajo	Eligible <sup>1,2</sup>	Concur <sup>1</sup>

\*Table to be updated based on ongoing consultation with BLM, NM SHPO, and NNTHPO.

<sup>1</sup> Site previously determined eligible by SHPO.

<sup>2</sup> Site revisit conducted in 2012 to confirm NRHP eligibility. OSMRE consulting with SHPO and BLM for this resource.

Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)

**TABLE C-7. ARCHAEOLOGICAL HISTORIC PROPERTIES IDENTIFIED IN ROW FOR PNM FW TRANSMISSION LINE ON NAVAJO LANDS**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
NM-G-48-68	Navajo Nation	Previously recorded artifact scatter with features	Unknown	Eligible	Pending
NM-R-4-41	Navajo Nation	Previously recorded artifact scatter	Unknown	Unevaluated	Pending
NM-R-4-42	Navajo Nation	Previously recorded artifact scatter	Unknown	Unevaluated	Pending
NM-R-5-13	Navajo Nation	Previously recorded artifact scatter	Anasazi	Eligible	Pending
NM-G-50-37	Navajo Nation	Artifact scatter	Unknown	Unevaluated	Pending
NM-G-50-38 (LA 173647)	Navajo Nation and BLM	Artifact scatter	Unknown	Unevaluated	Pending
NM-G-50-39	Navajo Nation	Artifact scatter with feature	Unknown	Eligible	Pending
NM-G-51-76	Navajo Nation	Artifact scatter with features	Unknown/ Navajo	Eligible	Pending
NM-G-51-77	Navajo Nation	Artifact scatter with features	Unknown	Eligible	Pending
NM-G-62-200	Navajo Nation	Artifact scatter	Unknown	Unevaluated	Pending
NM-H-21-212	Navajo Nation	Artifact scatter with features	Anasazi	Unevaluated	Pending
NM-R-5-14	Navajo Nation	Artifact scatter	Unknown	Unevaluated	Pending
NM-R-5-15	Navajo Nation	Artifact scatter	Archaic	Unevaluated	Pending
NM-R-10-19	Navajo Nation	Multiple residences	Navajo	Eligible	Pending
NM-R-10-20	Navajo Nation	Residence	Navajo	Eligible	Pending
NM-R-11-17	Navajo Nation	Residence	Navajo	Eligible	Pending
NM-R-12-6	Navajo Nation	Residence, commercial	Navajo	Eligible	Pending
NM-R-12-7	Navajo Nation	Artifact scatter with feature	Unknown	Unevaluated	Pending

\*Table to be updated based on ongoing consultation with NNTHPO.

Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)

**TABLE C-8. ARCHAEOLOGICAL HISTORIC PROPERTIES IDENTIFIED IN ROW FOR PNM FW TRANSMISSION LINE ON BLM, STATE, ZIA PUEBLO, AND PRIVATE LANDS\*.**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>SHPO CONCURRENCE WITH OSMRE FINDINGS</b>
LA 9176	State	Previously recorded multiple residence	Navajo	Eligible	Concur
LA 9177	BLM	Previously recorded artifact scatter with features	Navajo	Unevaluated	Pending
LA 13943	Private	Previously recorded artifact scatter	Ancestral Pueblo	Unevaluated	Pending
LA 28997	BLM	Previously recorded artifact scatter with features	Unknown/ Navajo	Unevaluated	Pending
LA 157254	BLM	Previously recorded artifact scatter with features	Unknown/ Navajo	Eligible	Concur
LA 169527	State and BLM	Previously recorded antelope trap	Unknown/ Navajo	Eligible	Concur
LA 173639	BLM	Residence	Navajo	Not Eligible	Pending
LA 173641	BLM	Artifact scatter	Unknown	Unevaluated	Pending
LA 173642	BLM, Navajo Nation*	Artifact scatter	Unknown	Unevaluated	Pending
LA 173646	BLM	Artifact scatter with features	Ancestral Pueblo	Eligible	Concur
LA 173647	BLM and Navajo	Artifact scatter	Unknown	Unevaluated	Pending
LA 173648	BLM	Artifact scatter	Unknown	Unevaluated	Pending
LA 173649	BLM RPFO	Artifact scatter	Unknown	Unevaluated	Pending
LA 173651	BLM	Artifact scatter with features	Unknown	Unevaluated	Pending
LA 173652/ LA 173803	BLM FFO	Historic dump	Unknown/ historic	Unevaluated	Pending
LA 173653	BLM RPFO	Artifact scatter	Unknown	Unevaluated	Pending
LA 173796	Private	Artifact scatter	Unknown	Unevaluated	Pending

\*Table to be updated based on ongoing consultation with BLM, New Mexico SHPO, and NNTHPO.

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

**TABLE C-9. ARCHAEOLOGICAL HISTORIC PROPERTIES IDENTIFIED IN ROW FOR PNM FW 345-KV RIO PUERCO TO WEST MESA.**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>SHPO CONCURRENCE WITH OSMRE FINDINGS</b>
LA 52100 <sup>1</sup>	Petroglyph National Monument	Previously recorded petroglyphs	Unknown	Eligible	Concur
LA 54635	Private	Previously recorded artifact scatter	Basketmaker II	Unevaluated	Pending
LA 54642	Private	Previously recorded artifact scatter	Basketmaker II/ Anasazi	Eligible	Concur
LA 54643	Private	Previously recorded artifact scatter	Ancestral Pueblo	Unevaluated	Pending
LA 111622	Private	Previously recorded artifact scatter with features	Middle to Late Archaic/ Developmental Pueblo	Eligible	Concur
LA 137833	Private	Previously recorded artifact scatter with features	Late Archaic	Eligible	Concur
LA 146431	Private	Previously recorded artifact scatter with features	Early to Late Archaic	Eligible	Concur
LA 146432	Private	Previously recorded artifact scatter	Early to Late Archaic/ Ancestral Pueblo	Eligible	Concur
LA 146435	Private	Previously recorded artifact scatter	Early to Late Archaic	Unevaluated	Pending
LA 162292	Private	Previously recorded artifact scatter	Unknown	Unevaluated	Pending
LA 175230	State Trust	Artifact scatter with features	Unknown	Eligible	Concur
LA 175232	Private	Artifact scatter	Unknown	Eligible	Concur
LA 175233	Private	Artifact scatter	Late Archaic	Eligible	Concur
LA 175234	Private	Artifact scatter with features	Unknown	Eligible	Concur

\*Table to be updated based on ongoing consultation with NPS and New Mexico SHPO.

<sup>1</sup>Site LA 52100 includes LA 8750, at the request of Petroglyph National Monument.

Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)

**TABLE C-10. HISTORIC RESOURCES/IN-USE AREAS HISTORIC PROPERTIES IDENTIFIED IN ROW FOR PNM FC TRANSMISSION LINE.**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>THPO CONCURRENCE WITH OSMRE FINDINGS</b>
AC HPL 1	Navajo Nation	Water Conveyance AD 1870-present	Anglo/Euro-American and Navajo	Unevaluated	Pending

\*Table to be updated based on ongoing consultation with NNTHPO.

**TABLE C-11. HISTORIC RESOURCES HISTORIC PROPERTIES IDENTIFIED IN ROW FOR PNM FC AND FW TRANSMISSION LINES.**

<b>SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>AFFILIATION</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>SHPO CONCURRENCE WITH OSMRE FINDINGS</b>
LA 176088	BLM, State, Private	Structural/ transmission line	Historic/ recent	Not Eligible/Pending <sup>1</sup>	Pending
LA 176089	BLM, State, Private	Structural/ transmission line	Historic/ recent	Not Eligible/Pending <sup>1</sup>	Pending

<sup>1</sup> Site originally recorded as archaeological site and determined not eligible as an archaeological site. Additional recordation as historic resource forthcoming.

Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)

**TABLE C-12. PROPERTIES OF RELIGIOUS AND CULTURAL SIGNIFICANCE (INCLUDING TCPs) IDENTIFIED IN APE ON HOPI RESERVATION.**

<b>HCPO SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>NAME</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>SHPO CONCURRENCE WITH OSMRE FINDINGS</b>
001-2009 <sup>1</sup>	Hopi	Ancestral habitation	N/A	Eligible	Pending
002-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter	N/A	Eligible	Pending
003-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter	N/A	Eligible	Pending
004-2009 <sup>1</sup>	Hopi	Spring	Tuqayva Spring (Listening Spring)	Eligible	Pending
005-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter	N/A	Eligible	Pending
006-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter, possible historic shepherding features or hogan foundation	N/A	Unevaluated; Additional Ethnographic Work Required (Eligible as Archaeological Site)	Pending
007-2009 <sup>1</sup>	Hopi	Possible historic shepherding features or hogan foundation	N/A	Unevaluated; Ethnographic Work Required (Testing also Required)	Pending
008-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter	N/A	Eligible	Pending
009-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter	N/A	Eligible	Pending
010-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter	N/A	Eligible	Pending
011-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter	N/A	Eligible	Pending
012-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter and feature	N/A	Eligible	Pending
013-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter	N/A	Eligible	Pending
014-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter and feature	Tawa'ovi (Place of the Sun)	Eligible	Pending
015-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter and feature	N/A	Eligible	Pending
016-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter and feature	N/A	Eligible	Pending
017-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter and feature	N/A	Eligible	Pending

**Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)**

<b>HCPO SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>NAME</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>SHPO CONCURRENCE WITH OSMRE FINDINGS</b>
018-2009 <sup>1</sup>	Hopi	Historic or modern petroglyphs and feature	N/A	Eligible	Pending
019-2009 <sup>1</sup>	Hopi	Unknown, historic, or modern petroglyphs, artifact scatter, and features	N/A	Eligible	Pending
020-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter and feature	N/A	Eligible	Pending
021-2009 <sup>1</sup>	Hopi	Ancestral habitation	N/A	Eligible	Pending
022-2009 <sup>1</sup>	Hopi	Rock shelter	N/A	Eligible	Pending
023-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter	N/A	Eligible	Pending
024-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter and feature	N/A	Eligible	Pending
025-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter, trail segment, offering place, and possible historic sheepherding features	N/A	Eligible	Pending
026-2009 <sup>1</sup>	Hopi	Ancestral habitation; petroglyphs	N/A	Eligible	Pending
027-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter and feature	N/A	Eligible	Pending
028-2009 <sup>1</sup>	Hopi	Ancestral artifact scatter	N/A	Eligible	Pending
029-2009 <sup>1</sup>	Hopi	Ancestral habitation	N/A	Eligible	Pending
Isolated Feature 4 <sup>2</sup>	Hopi	Stone trail marker and offering place	N/A	Eligible	Pending
001-2014	Hopi	Ancestral habitation with stone pillars	N/A	Eligible	Pending
N/A	Hopi	Trail	Third Mesa Kiisw Pilgrimage Route (Indian Route 22)	Eligible	Pending
N/A	Hopi	Trail	Hopi Salt Trail	Eligible	Pending
N/A	Hopi	Eagle collection site	Hotvela Piikyasngyam Eagle Collection Area	Eligible	Pending

Attachment C: Current List of National Register Eligible Properties (Historic Properties) and Unevaluated Properties within the APE (as of December 2, 2014)

<b>HCPO SITE #</b>	<b>LAND OWNERSHIP</b>	<b>DESCRIPTION</b>	<b>NAME</b>	<b>NRHP DETERMINATION BY OSMRE</b>	<b>SHPO CONCURRENCE WITH OSMRE FINDINGS</b>
N/A	Hopi	Eagle collection site	Hotvela Tepngyam Eagle Collection Area	Eligible	Pending
N/A	Hopi	Eagle collection site	Hotvela Kòokyangwngyam Eagle Collection Area	Eligible	Pending
N/A	Hopi	Mineral collection site	Qöya'owa	Eligible	Pending
N/A	Hopi	Mineral collection site	Sikya'owa	Eligible	Pending

<sup>1</sup>Identified in Laurila et al. 2011 as archaeological site.

<sup>2</sup>Identified in Laurila et al. 2011 as archaeological isolated feature.

# Attachment D: Agency, Consulting Tribes, and Proponent Contact List

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## Attachment D: Agency, Consulting Tribes, and Proponent Contact List

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## Attachment D: Agency, Consulting Tribes, and Proponent Contact List

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# Attachment D: Agency, Consulting Tribes, and Proponent Contact List

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## Attachment D: Agency, Consulting Tribes, and Proponent Contact List

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## Attachment E: Definitions

**Appropriate Federal Lead Agency:** This refers to OSMRE before execution of the Agreement and issuance of a Record of Decision for the Navajo Mine and refers to the BIA thereafter.

**Concurring Parties:** An invited Consulting Party to this Agreement that agrees with the content of the Agreement. The refusal of a concurring party to sign the Agreement does not invalidate this Agreement as noted in 36 CFR Part 800.6(c) (3). Concurring parties may not terminate the Agreement.

**Consulting Parties:** Parties that have consultative roles in the Section 106 process, as defined in 36 CFR Part 800.2(c). Consulting Parties include OSMRE, BIA, BLM, U.S. EPA, NPS, Navajo Nation, Hopi Tribe, Zia Pueblo, ACHP, New Mexico SHPO, Arizona SHPO, APS, and PNM.

**Determination of Effect:** A determination made by the lead federal agency in consultation with the SHPO/THPO, ACHP, and other consulting parties in regard to a project's effect upon a historic property as defined in 36 CFR Part 800.

**Determination of Eligibility:** A determination made by the lead federal agency in consultation with the SHPO/THPO and other consulting parties in regard to a cultural resource's eligibility for inclusion in the NRHP and more fully described in 36 CFR Part 60 and 36 CFR Part 800.16(1)(2).

**Earth-Disturbing Activity:** Work conducted by APS, PNM, or their contractors that results in any subsurface disturbance.

**Effect:** An alteration to the characteristics of a property qualifying it for inclusion in or eligibility for the NRHP (see 36 CFR Part 800.16 9i).

**Historic Property:** Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization and that meet the NRHP criteria (see 36 CFR Part 800.16(1)(a)).

**Historic Property Treatment Plan:** A plan developed in consultation with the parties to this Agreement that identifies minimization and mitigation measures for historic properties located within the APE that will be adversely affected by the Project.

**Invited Signatory:** OSMRE has invited PNM, APS, and BIA Southwest Region Office to be signatories to this Agreement pursuant to 36 CFR Part 800.6(c) (2). Invited Signatories have the right to seek amendment or termination of the Agreement. The refusal of any invited signatory to sign the Agreement does not invalidate the Agreement.

**Maintenance Evaluation Report:** Report to be written by PNM or APS, as appropriate, outlining the results of the internal evaluation process for maintenance activities that require additional evaluation. The report will include management recommendations and confirm impacts to identified cultural resources. It will be submitted to the land managing agency.

**Permitted Cultural Resources Contractor:** An archaeologist who meets the Secretary of Interior's Professional Qualification Standards for Archaeology, as well as other professional standards set forth by the New Mexico SHPO and federal land managing agencies.

**Project Proponent:** For the purposes of this Agreement, Project Proponent means either APS or PNM, as appropriate.

## Attachment E: Definitions

**Public Land Order 2198:** This was an order issued on Aug. 26, 1960, and provided for a land consolidation program to adjust Navajo Indian Land use and non-Indian use in areas outside of and in the vicinity of the Navajo Reservation in New Mexico. Much of the 2198 land was later transferred into Trust Land status per a land exchange agreement between Navajo Tribe and US Dept. of Interior BLM and the BIA, on May 1, 1991 [authorized by Indian Land Consolidation Act of 1983, Public Law 97-459 (96 Stat. 2517)]. The remaining 2198 Lands are BIA Administrative Lands.

**Signatory Parties:** All signatories to this Agreement, which includes OSMRE, BLM, BIA, EPA, NPS, ACHP, Navajo Nation THPO, the Hopi CPO, Zia Pueblo, and the SHPOs of New Mexico and Arizona. (Signatory parties include the federal agency[ies], SHPOs, THPOs [or designee] if the undertaking is carried out on tribal land or affects historic properties on tribal land, and also any OSMRE invited signatories [not including invited concurring parties]).

**Undertaking:** Any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency (36 CFR Part 301(7)). The term Undertaking is used in this Agreement to refer to all federal permits and approvals for the Four Corners Power Plant and Navajo Mine Energy Project.

## Attachment F: Regulations and Guidelines Referenced

American Indian Religious Freedom Act (ARPA; 42 USC 1996 and 1996a)

Archaeological Resources Protection Act (ARPA; 16 USC 470, 43 CFR 7)

Arizona State Historic Preservation Act of 1982 including Arizona Revised Statutes 41-862 through 41-864

BLM 8110 Manual: Identifying and Evaluating Cultural Resources

BLM H-8100-1: Procedures for Performing Cultural Resources Fieldwork on Public Lands in the Area of New Mexico  
BLM Responsibilities (BLM 2005)

Hopi Ordinance 26: Ordinance for the Protection of Places and Objects of Sacred, Historical and Scientific Interest on the Hopi Reservation

Hopi Preservation procedures/guidelines

National Historic Preservation Act (NHPA; 16 USC 470 et seq.)

National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (NPS 1990; Revised 1992; 1998)

Native American Graves Protection Act (NAGPRA; 25 USC 3001; 43 CFR 10)

Navajo Nation Cultural Resources Protection Act

Navajo Nation Policy for the Disposition of Cultural Resource Collections

New Mexico Cultural Properties Act (Section 18-6 through 18-6-23; New Mexico Statutes Annotated 1978)

New Mexico Cultural Properties Act (Section 18-6A through 18-6A-6; New Mexico Statutes Annotated 1978)

New Mexico Prehistoric and Historic Sites Preservation Act of 1989 (Sections 18-8-1 through 18-8-8; New Mexico Statutes Annotated 1978)

New Mexico Permits to Conduct Archaeological Investigations on State Land (4.10.8 NMAC)

New Mexico Issuance of Permits to Excavate Unmarked Human Burials in the State of New Mexico (4.10.11 NMAC)

New Mexico Standards for Survey and Inventory (4.10.15 NMAC)

New Mexico Standards for Excavation and Test Excavation (4.10.16 NMAC)

New Mexico Standards for Monitoring (4.10.17 NMAC)

Section 28 of the Mineral Leasing Act of 1920 (30 USC 185)

Section 106 of the NHPA (36 CFR Part 800)

The ACHP's guidance on conducting archaeology under Section 106 (2007)

## Attachment F: Regulations and Guidelines Referenced

The ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007)

The Arizona Antiquities Act of 1960, including Arizona Revised Statutes 41-841 through 41-845

The Navajo Nation Policy for the Protection of Jishchaa'

The Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983)

The Secretary of the Interior's Standards for the Rehabilitation (36 CFR 67)

The "*Treatment of Archaeological Properties*" (ACHP 1983)

Title V of the Federal Land Policy and Management Act of 1976 (43 USC 1701)

## Attachment G: List of Areas to be Surveyed under the PA

**TABLE G-1. AREAS NOT SURVEYED AND ADDITIONAL WORK REQUIRED AS OF DRAFT PA**

<b>PROJECT AREA</b>	<b>LOCATION</b>	<b>STATUS</b>
FCPP	Morgan Lake, including dam and 100-foot buffer around the lake	Approval of report pending
FCPP	Pumping plant area, including 100-foot buffer around the plant	Approval of report pending
FCPP	69-kV transmission line from FCPP to pumping plant, including 100-foot corridor centered on the transmission line	Approval of report pending
FCPP	Water pipeline from San Juan River to Morgan Lake, including 100-foot corridor centered on the pipeline, and water pipeline access road from pumping plant to Morgan Lake, including 100-foot corridor centered on the road	Approval of report pending
FCPP	County Road 6675 from FCPP to San Juan River, including 150-foot corridor centered on the road	Approval of report pending

# Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

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# Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

## NAVAJO NATION PROCEDURES AND PROTOCOLS

### I. Unanticipated Discoveries within the Jurisdiction of the Navajo Nation and on Allotments owned by Individual Navajo Members

In the event of an unanticipated discovery within the Navajo Nation, the Navajo Nation Historic Preservation Department (HPD) Guidelines for the Treatment of Discovery Situations will be followed, as outlined below.

#### Protocol

- A. These guidelines must be followed in any situation involving the discovery of any kind of cultural or historic property, including historical and prehistoric archaeological sites and traditional cultural properties, and human remains, whether previously identified or unknown.
- B. In the event of a discovery, the project sponsor will inform the project contractor to temporarily cease work within 50 feet of the site. A 100-foot-radius avoidance zone will be maintained around discoveries containing human remains.
- C. HPD will be contacted within one (1) working day at (928) 871-7147 or -7148 to arrange for proper evaluation of any discovery. The BIA Navajo Region will also be contacted within twenty-four (24) hours of the discovery via email or phone.
- D. When a cultural or historic property is discovered:
  - a. HPD will make a recommendation of effect and significance of the cultural or historic property(ies) by the most efficient and expeditious means and notify the BIA of these recommendations.
  - b. HPD will consult with interested parties, including other Indian tribes, during development of a scope of work and will take into account comments from interested parties in developing the scope-of-work.
  - c. In the event of a dispute concerning the disposition of human remains discovered on the Navajo Nation, the Navajo Nation Historic Preservation Officer will make all final decisions regarding resolution of disputes in accordance with Navajo Nation policies.

#### Administrative Procedures

For discovery situations where a scope-of-work has been approved:

- A. HPD will define a 50-foot-radius avoidance zone around the discovery (100-foot-radius if the discovery contains human remains) to remain in effect for the duration of investigations at the site.
- B. HPD will make recommendations regarding significance and eligibility for nomination to the National Register of Historic Places for each discovered property.
- C. If the property is eligible, HPD will establish a schedule to complete treatment.
- D. HPD will implement or direct its contractor to implement the scope-of-work at each discovery consistent with the approved scope-of-work for the undertaking.

## Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

- E. The methods of excavation, recordation, conservation, analysis, preservation, storage, interviewing or consultation with knowledgeable individuals and interested parties, and reporting of discoveries shall be consistent with the scope-of-work, the general and specific methods of treatment outlined below, and stipulations of any existing memorandum of agreement or programmatic agreement applicable to the undertaking.
- F. HPD will simultaneously notify the BIA and all declared interested parties upon the completion of treatment.
- G. The HPD, in consultation with BIA, will wait three (3) working days after work is completed at the discovery before letting the project contractor continue work in the avoidance zone, except in cases of emergency. This period will enable consulting and interested parties to submit comments.
- H. The results of the investigations at a discovery will be incorporated into the draft technical report. Confidential data resulting from the ethnographic assessment and provenience data for all cultural and historic sites will be provided in one or more detachable appendices. Confidential appendices will only be distributed to appropriate parties.
- I. The contractor will finalize the technical report, incorporating or addressing comments received from HPD.

For discoveries situations where a scope-of-work has not been approved:

- A. HPD will define a 50-foot-radius avoidance zone around the discovery (100-foot-radius if the discovery contains human remains) to remain in effect for the duration of investigations at the discovery.
- B. HPD will make recommendations regarding significance and eligibility for nomination to the National Register of Historic Places for each discovered property.
- C. If the property is eligible, HPD will establish a schedule to complete treatment.
- D. HPD will direct the Project Proponent to provide a scope-of-work within five (5) working days of the request, except in cases of emergency.
- E. The methods of excavation, recordation, conservation, analysis, preservation, storage, consultation, and reporting of discoveries shall be consistent with the scope-of-work, the general and specific methods of treatment outlined below, and stipulations of any existing memorandum of agreement or programmatic agreement applicable to the undertaking.
- F. Upon approval of the scope-of-work by HPD, HPD will direct the Project Proponent to implement the plan.
- G. HPD will simultaneously notify the BIA and all declared interested parties upon the completion of treatment.
- H. HPD, in consultation with BIA, will wait three (3) working days after work is completed at the discovery before letting the project contractor continue work in the avoidance zone, except in cases of emergency.

## Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

- I. The results of investigations at a discovery will be incorporated into a draft technical report. Confidential data resulting from the ethnographic assessment and provenience data for all cultural and historic sites will be provided in one or more detachable appendices. Confidential appendices will only be distributed to appropriate parties.
- J. The contractor will finalize the technical report, incorporating or addressing comments received from HPD.

### **General Methods of Treatment**

In all discovery situations the existing ground surface in the vicinity of the discovery will be mapped to show the relationship of the discovery to the project area, topographic features, cultural features, and surface artifacts. The map will be prepared using, at a minimum, a compass and measuring tape.

#### Archaeological Methods:

Assessment and treatment of cultural resources may be accomplished using archaeological methods. Data recovery strategies for historic properties may include in situ preservation, scientific testing and excavation, and documentation. This information will be used to develop a scope-of-work for treatment of affected properties. The plan will be implemented after approval of HPD.

The general process for treatment of archaeological components of historic properties is as follows:

1. Assessment of situation by a qualified archaeologist.
2. Development of a strategy to determine the significance of the property if significance is not explicit from visible evidence. Initiate a testing program if necessary.
3. Development of a strategy for data recovery and implementation of the plan for data recovery.

#### Ethnographic Methods:

Assessment and treatment of cultural resources and burials may be accomplished using ethnographic methods. Methods include conducting interviews with chapter officials, local and customary land users, and other knowledgeable individuals to elicit information regarding these surface features. This information will be used to develop a scope-of-work for treatment of affected properties. The plan will be implemented after approval of HPD.

The general process for treatment of traditional cultural properties, historical sites, and burials (not found in the context of a historic property) is as follows:

1. Assessment of situation by a qualified anthropologist and/or cultural specialist.
2. Consultation with chapter officials, local and customary land users, and other knowledgeable individuals.
3. In the case of unclaimed human remains, consultation with interested parties, including officials from other Indian tribes.
4. Development of a scope-of-work, in consultation with HPD.

## Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

5. Implementation of the scope-of-work upon approval by HPD.
6. Preparation of a technical report; confidentiality of information will be ensured.

Burials not found in the context of a historic property will be treated in accordance with the Navajo Nation Policies and Procedures Concerning the Protection of Cemeteries, Gravesites and Human Remains and the Native American Graves Protection and Repatriation Act.

### **Specific Method of Treatment:**

The following methods of treatment are offered for situations in which a research design or scope-of-work has not been approved for the undertaking. If a research design or scope-of-work has been approved for a specific undertaking, discovered historic and cultural properties, and human remains, shall be treated in a manner consistent with the research design or scope-of-work, using the following treatment methods as a guideline.

#### Ash Stains, Hearths, and Other Thermal Features:

The location will be mapped and the feature will be profiled and photographed. Excavated fill will be screened through quarter-inch or smaller mesh. If it appears that the feature can be dated through association of artifacts or stratigraphy, appropriate samples may be taken, including charcoal fragments for radiocarbon dating. Should the feature appear likely to yield botanical remains, pollen and flotation samples may be collected. HPD must be consulted before any samples are analyzed.

#### Storage Pits:

The location will be mapped and the feature will be profiled and photographed. The feature will be fully excavated, and the fill must be screened through quarter-inch or smaller mesh screen. If it appears that the feature can be dated through association of artifacts or stratigraphy appropriate samples may be taken. Should the feature appear likely to yield botanical remains, pollen and flotation samples may be collected. All artifacts will be collected. HPD must be consulted before any samples are analyzed.

#### Buried or Partially Buried Structures, Middens, and Other Features:

Examples of buried or partially buried features include pit structures, pithouses, and kivas. The location will be mapped and the feature will be profiled and photographed. Treatment of buried or partially buried features is a two-stage process involving (1) nature and extent testing within the area of effect to define the boundary of the feature and detect the presence of additional features and (2) data recovery within the area of effect. Systematic trenching in conjunction with 1 by 1 m test units, or other subsurface investigative techniques, may be used within the area of effect. Consultation with HPD is required after the initial recording has been completed for review of the data recovery plan.

Excavated fill will be screened through quarter-inch or smaller mesh. If it appears that the feature can be dated through association of artifacts or stratigraphy, or by radiographic or archeomagnetic dating, appropriate samples may be taken. Should the feature appear likely to yield botanical remains, pollen and flotation samples may be collected. HPD must be consulted before any samples are analyzed.

## Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

### Miscellaneous Prehistoric Features:

Examples of miscellaneous features include buried cultural horizons and agricultural features. The location will be mapped and the feature will be profiled and photographed. The strategy for treatment of miscellaneous prehistoric features is the same as that for buried or partially buried features.

### Surface Features:

Examples of surface features include field houses, jacal structures, ramadas, masonry structures, historical, contemporary, and modern structures, and various types of historic landscapes. The location will be mapped and the feature(s) will be photographed. Treatment of surface features may be a multistage process involving (1) intensive and extensive documentation of the property to define the boundary of the feature and detect the presence of additional features, (2) consultation with local and customary users, and other knowledgeable individuals, in order to determine the nature of the site, place, property, or feature and recommend a Treatment Plan, and (3) implementation of data recovery or the Treatment Plan within the area of effect.

The strategy discussed above for treatment of buried or partially buried features may be the appropriate way to treat some surface features and should be used as a guideline for data recovery. Alternatively, the strategy espoused below for traditional cultural properties and historical sites may be more appropriate and should be used as a guideline for treatment.

### Traditional Cultural Properties (TCPs) and Historical Sites:

Examples of traditional or historical features include named landscape features, mineral or herb gathering areas, offering areas, hogans, trail markers, cairns, sheep corrals, ceremonial sites (e.g., Enemy Way sites), sweathouses, and tepee grounds. If a TCP or historical site is encountered, or information about a possible site is provided to the project sponsor or their agent by any knowledgeable or concerned individual, the project sponsor must ensure that work is discontinued within a 50-foot-radius of the property and contact HPD within one (1) day of the discovery. Treatment of TCPs or historical sites is a two-stage process involving (1) consultation with HPD along with local and customary users, and other knowledgeable individuals, in order to determine the nature of the site, place, property, or feature and recommend a scope-of-work and (2) implementation of the scope-of-work. Examples of treatment include, but are not limited to, the following:

1. Avoiding the remaining portion of the property through use of protective fencing or redesign of the undertaking or project.
2. Monitoring the remaining portion of the property during construction and/or erection of protective fencing to ensure protection.
3. Moving material remains of the TCP. This activity may include participation of local medicine men or women for ceremonial blessings.
4. Restricting construction activities to certain seasons or times of the day.
5. Conducting ceremonies for the well-being of properties that have been affected.

## Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

HPD will recommend the best possible treatment as guided by interviews and consultation.

### **II. Discovery of Human Remains Within the Jurisdiction of the Navajo Nation and on Allotments owned by Individual Navajo Members**

- A. Upon encountering an unmarked grave or unregistered grave during operations and/or maintenance activities, APS or PNM, as appropriate, will immediately stop work within a one-hundred (100) foot radius of the point of discovery. APS or PNM, as appropriate, will implement interim measures to protect the discovery in situ and from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery. *Under no circumstances* shall APS or PNM further disturb human remains except under the formal direction of Navajo Nation THPO.
- B. APS or PNM, as appropriate, will notify the Navajo Nation THPO and BIA Navajo Region within twenty-four (24) hours of the discovery.
- C. The Navajo Nation THPO will determine the treatment, including mitigation and disposition of the unmarked human burial or unregistered grave in consultation with the BIA Navajo Region.
- D. APS or PNM, as appropriate, will implement the treatment and disposition measures deemed appropriate by the Navajo Nation THPO, which will be in accordance with the laws of the Navajo Nation, as applicable. Claimed human remains shall not be disturbed without the consent of the next-of-kin. Unclaimed human remains shall be treated according to the provisions of the Navajo Nation Policies and Procedures Concerning the Protection of Cemeteries, Gravesites and Human Remains and the Native American Graves Protection and Repatriation Act.
- E. APS or PNM, as appropriate, will resume operations and/or maintenance in the area of discovery upon receipt of written authorization from the Navajo Nation THPO.

# Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

## HOPI TRIBE PROCEDURES AND PROTOCOLS

### I. Unanticipated Discoveries within the Hopi Tribe Reservation

In the event of an unanticipated discovery within the Hopi Tribe Reservation, the following guidelines will be followed.

- A. APS shall cease all activity within a 50-foot radius surrounding the location of the discovery and shall immediately notify the HCPO and BIA Western Region within twenty-four (24) hours of the discovery. Notification can be made by email, phone, or in person at the HCPO office. BIA will be notified by email or phone. APS will follow up with written confirmation of the discovery.
- B. APS in consultation with the HCPO and BIA Western Region will arrange for an archaeologist with appropriate expertise or Hopi cultural specialist to document and preliminarily assess the finding and formulate a recommendation regarding whether the discovery is eligible for the NRHP and merits further consideration. Any archaeologist working on the Hopi Tribal Lands shall at all times be in compliance with permitting requirements, as may be applicable. The assessment shall address the following factors:
  - a. The nature of the resource, such as the number and kinds of artifacts, and presence or absence of archaeological features. This may require screening of already disturbed deposits, photographs of the discovery, and collection of other information.
  - b. The spatial extent of the resource. This may require additional testing, mapping, or inspection to delineate the boundaries of the site. Boundary delineation should not take the place of formal site testing.
  - c. The nature of the deposits in which the discovery was made. This may require additional testing, inspection, or interviews with persons involved in the discovery. Any testing activities that impact archaeological deposits will need concurrence from the HCPO before being implemented, subject, as appropriate, to applicable ARPA requirements.
  - d. The contextual integrity of the resource, damage related to the initial discovery, and potential impacts of the continued activity that resulted in the discovery.
- C. Except in cases of emergency, HCPO will make a NRHP eligibility determination within seven (7) calendar days following discovery and will provide the relevant assessment documentation to the BIA Western Region. BIA Western Region will forward the determination to the Arizona SHPO for concurrence.
  - a. Where a property is evaluated as not being eligible, the BIA Western Region and Arizona SHPO will have a seven (7) calendar-day comment period. If there is concurrence with the evaluation or no response within the comment

## Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

period, activities that led to the discovery may resume under the protocols of Stipulation VII(C).

- b. For properties evaluated as eligible or potentially eligible, BIA Western Region will make a determination of eligibility and seek concurrence from the Arizona SHPO. The Arizona SHPO will review and comment within an expedited period of fifteen (15) calendar days. APS will then follow procedures under Stipulation VII(C)(2) before the activity can be resumed in the area of discovery.

### **II. Discovery of Human Remains Within the Hopi Tribe Reservation**

- A. Compliance with applicable laws and regulations including Native American Graves Protection Act (NAGPRA)(25 USC 3001[3]; 43 CFR § 10), ACHP Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007), and any guidance provided by the HCPO including Ordinance 26, will be followed as appropriate.
- B. When encountering an unmarked grave or unregistered grave during operations and/or maintenance activities, APS will cease the activity within a one-hundred (100) foot radius surrounding the location of discovery and will immediately notify the HCPO and BIA of the discovery within twenty-four (24) hours. Notification can be made by email, phone, or in person at the HCPO office. APS will follow up with written confirmation of the discovery. BIA Western Region will be notified by email or phone. The HCPO will respond immediately and will keep BIA Western Region apprised of the discovery.
- C. During this time, APS will ensure that any and all human remains, sacred objects, and objects of cultural patrimony will be protected from looting or vandalism and treated with dignity and respect. Human remains, sacred objects, and objects of cultural patrimony should not be removed or further disturbed without concurrence from the HCPO.
- D. The BIA Western Region will notify the Arizona SHPO within forty-eight (48) hours, if the remains occur within an archaeological site and will follow protocols set forth in Attachment H.I.
- E. APS will facilitate the implementation of the treatment and the disposition for human remains, sacred items, and objects of cultural patrimony that are deemed appropriate by the HCPO.
- F. APS will resume operations and/or maintenance in the area of discovery upon receipt of written authorization from the BIA Western Region, in consultation with the HCPO.

# Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

## ZIA TRIBE PROCEDURES AND PROTOCOLS

### I. Discoveries within Zia Pueblo Lands

In the event of an unanticipated discovery within Zia Pueblo Lands, the following guidelines will be followed.

- A. PNM shall cease all activity within a 50-foot radius surrounding the location of the discovery and shall immediately notify the Zia Pueblo and BIA Southwest Region within twenty-four (24) hours of the discovery. Notification can be made by email or phone.
- B. BIA Southwest Region will notify the New Mexico SHPO of the discovery within twenty-four (24) hours by email or phone.
- C. PNM, in consultation with the Zia Pueblo, BIA Southwest Region, and New Mexico SHPO, will arrange for an archaeologist with appropriate expertise to document and preliminarily assess the finding and formulate a recommendation regarding whether the discovery is eligible for the NRHP and merits further consideration. The archaeologist shall prepare the documentation and conduct the assessment in accordance with any permits that may be required, as applicable. The assessment shall address the following factors:
  - a. The nature of the resource, such as the number and kinds of artifacts, and presence or absence of archaeological features. This may require screening of already disturbed deposits, photographs of the discovery, and collection of other information.
  - b. The spatial extent of the resource. This may require additional testing, mapping, or inspection to delineate the boundaries of the site. Boundary delineation should not take the place of formal site testing.
  - c. The nature of the deposits in which the discovery was made. This may require additional testing, inspection, or interviews with persons involved in the discovery.
  - d. The contextual integrity of the resource, damage related to the initial discovery, and potential impacts of the continued activity that resulted in the discovery.
- D. The BIA Southwest Region shall notify the Consulting Parties within forty-eight (48) hours that it will take comments concerning the unanticipated discovery. BIA, in consultation with Zia Pueblo, will make an NRHP eligibility determination within seven (7) calendar days following notification, after considering the timely filed views of the appropriate Consulting Parties. Where a property is determined not to be eligible, records of this assessment will be made available to the New Mexico SHPO. The New Mexico SHPO will have seven (7) calendar days to review and provide comment on the determination. Activities that led to the discovery may resume under the protocols of Stipulation VIII(B)(1).

## Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

- E. For properties determined eligible or potentially eligible, protocols outlined in a Historic Properties Treatment Plan will be followed by the BIA Southwest Region, in consultation with the Zia Pueblo. The BIA Southwest Region will request an expedited 15 day review and comment period by the New Mexico SHPO and Zia Pueblo for determinations of eligibility.
- F. If it was an activity that originally led to the unanticipated discovery, the activity may proceed after a Treatment Plan is developed and implemented as outlined in the Treatment Plan and after written authorization by the BIA Southwest Region.

### **II. Discovery of Human Remains Within Zia Pueblo Lands**

- A. Upon discovery, PNM will comply with applicable laws and regulations including Native American Graves Protection Act (NAGPRA)(25 USC 3001[3]; 43 CFR 10), ACHP Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007), and any guidance provided by the Zia Pueblo, BIA Southwest Region, and New Mexico SHPO.
- B. Upon encountering an unmarked grave or unregistered grave during operations and/or maintenance activities, PNM will immediately stop work within a one-hundred (100) foot radius of the point of discovery. PNM will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
- C. PNM will notify the Zia Pueblo and BIA Southwest Region within twenty-four (24) hours of the discovery via phone or email. The BIA Southwest Region will notify the New Mexico SHPO if the discovery is associated within a precontact archaeological site, and local law enforcement within twenty-four (24) hours of notification. The local law enforcement will notify the Medical Examiner, if necessary.
- D. The BIA Southwest Region, in consultation with the Zia Pueblo, will determine the treatment, including mitigation and disposition of the unmarked human burial or unregistered grave.
- E. PNM will implement the treatment and disposition measures deemed appropriate by the Zia Pueblo and BIA Southwest Region. PNM will resume operations and/or maintenance in the area of discovery upon receipt of written authorization from the BIA Southwest Region.

# Attachment H: Unanticipated Discovery of Archaeological Materials and Human Remains: Procedures and Protocols

## FEDERAL LAND PROCEDURES AND PROTOCOLS

### I. Unanticipated Discoveries within Federal Lands

In the event of an unanticipated discovery within federal lands, Section 106 of the NHPA and ARPA will be followed and the following guidelines will apply.

- A. PNM shall cease all activity within a 50 foot radius surrounding the location of the discovery and shall immediately notify the federal land manager and BIA within twenty-four (24) hours of the discovery. Notification can be made by email or phone.
- B. BIA will notify the New Mexico SHPO of the discovery within twenty-four (24) hours by email or phone.
- C. PNM, in consultation with the federal land manager, New Mexico SHPO, and BIA, will arrange for an archaeologist with appropriate expertise to document and preliminarily assess the finding and formulate a recommendation regarding whether the discovery is eligible for the NRHP and merits further consideration. The archaeologist shall prepare the documentation and conduct the assessment in accordance with any permits that may be required pursuant to ARPA, as applicable. The assessment shall address the following factors:
  - a. The nature of the resource, such as the number and kinds of artifacts, and presence or absence of archaeological features. This may require screening of already disturbed deposits, photographs of the discovery, and collection of other information.
  - b. The spatial extent of the resource. This may require additional testing, mapping, or inspection to delineate the boundaries of the site. Boundary delineation should not take the place of formal site testing.
  - c. The nature of the deposits in which the discovery was made. This may require additional testing, inspection, or interviews with persons involved in the discovery.
  - d. The contextual integrity of the resource, damage related to the initial discovery, and potential impacts of the continued activity that resulted in the discovery.
- D. The BIA shall notify the Consulting Parties within forty-eight (48) hours that it will take comments concerning the unanticipated discovery. A NRHP eligibility determination will be made within seven (7) calendar days following notification, after considering the timely filed views of the Consulting Parties, as defined in Attachment E. Where a property is determined not to be eligible by the BIA, in consultation with the federal land manager and New Mexico SHPO, PNM may resume the activity that resulted in the discovery upon written authorization by the BIA.
- E. For properties determined eligible or potentially eligible, the BIA, in consultation with the federal land manager and New Mexico SHPO, will review the Treatment

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Plan to identify applicable actions to resolve adverse effects and will notify Consulting Parties.

- a. The Consulting Parties will have forty-eight (48) hours to provide their views on the proposed actions.
  - b. The BIA, in consultation with the federal land manager, will ensure that the timely filed recommendations of the Consulting Parties are taken into account prior to granting approval of the measures that PNM will implement to resolve adverse effects.
  - c. Consistent with the terms of this Agreement, PNM will carry out the approved measures prior to resuming operations and/or maintenance activities in the location of the discovery.
- F. If it was an activity that originally led to the unanticipated discovery, the activity may proceed upon written authorization by the BIA.

### **II. Discovery of Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony Within Federal Lands**

- A. Upon discovery, PNM will comply with applicable laws, regulations, and guidelines including Native American Graves Protection Act (NAGPRA)(25 USC 3001[3]; 43 CFR 10), and ACHP Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007).
- B. Upon encountering an unmarked grave or unregistered grave during operations and/or maintenance activities, PNM will immediately stop work within a one-hundred (100) foot radius of the point of discovery. PNM will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
- C. PNM will notify the BIA and federal land manager within twenty-four (24) hours of the discovery. The BIA will notify the New Mexico SHPO if the discovery is associated within a precontact archaeological site, and local law enforcement, if applicable, within twenty-four (24) hours of notification.
- D. The federal land manager archaeologist or if delegated, permitted cultural resources contractor, will conduct an initial assessment of the discovery and will notify the Medical Examiner, if necessary.
- E. The federal land manager, in consultation with BIA and the affected tribes, and New Mexico SHPO (if involved and as applicable), will determine the treatment, including mitigation and disposition of the unmarked human burial or unregistered grave.
- F. PNM will implement the treatment and disposition measures deemed appropriate by the BIA, in agreement with the federal land manager, affected tribes, and New Mexico SHPO (if involved and as applicable). All necessary permits will be issued by the federal land manager in consultation with BIA and the affected tribes and SHPO, if involved.

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- G. PNM will resume operations and/or maintenance in the area of discovery upon receipt of written authorization from the BIA.

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## NEW MEXICO STATE OR PRIVATE LANDS PROCEDURES AND PROTOCOLS

### I. Unanticipated Discoveries within New Mexico State or Private Lands

In the event of an unanticipated discovery within New Mexico state or private lands, New Mexico Cultural Properties Act (N.M. Stat. Part 18-6-1 through 18-6-17, as amended through 2005) and implementing regulation 4.10.8 New Mexico Administrative Code (NMAC) will be followed and the following guidelines will apply.

- A. PNM shall cease all activity within a 50 foot radius surrounding the location of the discovery and shall immediately notify the New Mexico SHPO and BIA within twenty-four (24) hours of the discovery. If the discovery occurs on state land, NMSLO will also be contacted within 24 hours of the discovery. Notification can be made by email or phone.
- B. PNM, in consultation with the New Mexico SHPO, NMSLO as appropriate, and BIA, will arrange for an archaeologist with appropriate expertise to document and preliminarily assess the finding and formulate a recommendation regarding whether the discovery is eligible for the NRHP and merits further consideration. The archaeologist shall prepare the documentation and conduct the assessment in accordance with any permits that may be required pursuant to the New Mexico Cultural Properties Act. The assessment shall address the following factors:
  - a. The nature of the resource, such as the number and kinds of artifacts, and presence or absence of archaeological features. This may require screening of already disturbed deposits, photographs of the discovery, and collection of other information.
  - b. The spatial extent of the resource. This may require additional testing, mapping, or inspection to delineate the boundaries of the site. Boundary delineation will not be substituted for formal site testing.
  - c. The nature of the deposits in which the discovery was made. This may require additional testing, inspection, or interviews with persons involved in the discovery.
  - d. The contextual integrity of the resource, damage related to the initial discovery, and potential impacts of the continued activity that resulted in the discovery.
- C. BIA shall notify the New Mexico SHPO, NMSLO as appropriate, and Consulting Parties within forty-eight (48) hours that it will take comments concerning the unanticipated discovery. A NRHP eligibility determination will be made within seven (7) calendar days following notification, after considering the timely filed views of the New Mexico SHPO, NMSLO as appropriate, and Consulting Parties, as defined in Attachment E. Where a property is determined not to be eligible, PNM may resume the activity that resulted in the discovery with written authorization by the BIA.

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- D. For properties determined eligible or potentially eligible, the BIA, in consultation with the New Mexico SHPO and NMSLO as appropriate, will review a Historic Properties Treatment Plan to identify applicable actions to resolve adverse effects and will notify the Consulting Parties.
  - a. The New Mexico SHPO, NMSLO as appropriate, and Consulting Parties will have forty-eight (48) hours to provide their views on the proposed actions.
  - b. The BIA will ensure that the timely filed recommendations of the New Mexico SHPO, NMSLO as appropriate, and Consulting Parties are taken into account prior to granting approval of the measures that PNM will implement to resolve adverse effects.
  - c. Consistent with the terms of this Agreement, PNM will carry out the approved measures prior to resuming operations and/or maintenance activities in the location of the discovery.
- E. If it was an activity that originally led to the unanticipated discovery, the activity may proceed upon written authorization by the BIA.

### **II. Discovery of Human Remains within New Mexico State or Private Lands**

- A. Upon discovery, PNM will comply with the New Mexico Cultural Properties Act (N.M. Stat. Part 18-6-11.2, as amended through 2005) and implementing regulation 4.10.11 New Mexico Administrative Code (NMAC). The ACHP Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007) shall also be followed as appropriate.
- B. Upon encountering an unmarked burial or unregistered grave during operations and/or maintenance activities, PNM will immediately stop work within a one-hundred (100) foot radius of the point of discovery. PNM will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
- C. PNM will notify the BIA and local law enforcement within twenty-four (24) hours of the discovery. The local law enforcement will notify the Medical Investigator. BIA will notify the New Mexico SHPO, NMSLO as appropriate, and Consulting Parties within twenty-four (24) hours of notification.
- D. The Medical Investigator shall determine whether the discovery is of medicolegal significance.
- E. If the discovery has medicolegal significance, the Medical Investigator may, consistent with the statutes governing medical investigations (e.g., 42-11-5 NMSA 1978), have authority over or take possession of the discovery, in which case the provisions of Subsections F and G of this section shall not apply.
- F. If the discovery is determined to be without medicolegal significance, the New Mexico SHPO and NMSLO, as appropriate, in consultation with the BIA, PNM, and Permitted Cultural Resources Contractor, and in accordance with 4.10.11 NMAC,

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- will determine the treatment, including mitigation of the unmarked human burial or unregistered grave.
- G. PNM will implement the treatment measures deemed appropriate by the BIA, New Mexico SHPO, and NMSLO, as appropriate. If excavation is planned, a consultant holding an Annual Unmarked Human Burial Excavation Permit will conduct the excavations.
  - H. At the conclusion of excavation, PNM will submit a recommended plan for disposition to the New Mexico SHPO for review and comment in accordance with 4.10.11 NMAC. Once accepted by the New Mexico SHPO, PNM will implement the approved disposition plan.

PNM will resume operations and/or maintenance in the area of discovery upon receipt of written authorization from the BIA, in consultation with either the Medical Examiner or the New Mexico SHPO, whoever has jurisdiction under state law.