AMENDMENT 1 TO
PROGRAMMATIC AGREEMENT (PA)

among:
U.S. Department of the Interior
Bureau of Land Management New Mexico State Office (BLM);
New Mexico State Historic Preservation Officer (SHPO);
and Advisory Council on Historic Preservation (ACHP)

concerning:
Improved Strategies for Managing Historic Properties
Within the Permian Basin, New Mexico

This Programmatic Agreement (PA) codifies an alternative set of procedures by which the BLM will meet its Section 106 responsibilities for portions of southeast New Mexico. This alternative process evidences the BLM's commitment to adopt programmatic approaches towards compliance with Section 106 of the National Historic Preservation Act (NHPA).

These alternative Section 106 procedures are offered to the oil and gas industry and other industrial-related undertakings in southeast New Mexico on a voluntary basis. Companies may choose not to participate at all in this program, or they may decide not to follow these alternative measures for particular projects. When industry elects not to follow these actions, they have the right to follow those Section 106 processes and consultation procedures detailed within the current *State Protocol between the New Mexico Bureau of Land Management and the New Mexico State Historic Preservation Officer Regarding the Manner in which BLM will meet its Responsibilities under the National Historic Preservation Act in New Mexico* (Protocol) that allows the BLM to meet its requirements under the NHPA.

I. Purpose

The purpose of this PA is to implement a creative, directed program to resolve adverse effects and, in particular, the cumulative and indirect effects of full-field oil and gas development and other industrial-related development undertakings in southeastern New Mexico and result in better decisions affecting the management of historic properties in the Permian Basin. High rates of erosion within the sand sheets of the region are compounding human-caused losses of artifacts, site features, and depositional integrity. The PA seeks to acquire better knowledge about the prehistory of southeast New Mexico through the systematic application of a standard research design and a uniform field methodology. Information gained is intended to improve the management of cultural resources in southeast New Mexico and the Section 106 process. Periodic public conferences and popular and technical synthesis will ensure that the public appreciates what the study of cultural resources can say regarding cultural developments in this frontier region.

II. Basis for PA

The parties acknowledge the following basis for this PA:

A. Whereas, since the inception of the NHPA in 1966, archeological resource management in southeast New Mexico has been based on Class III inventories to identify historic properties, followed by a "flag-and-avoid" protocol that encourages project proponents to relocate proposed land-disturbing undertakings to areas without historic properties; and

B. Whereas, while this strategy was initially successful, it has now proven to be a poor management tool for addressing cumulative and indirect effects in the Permian Basin. "Flag- and-avoid" has not prevented unauthorized collections, the disappearance of diagnostic artifacts, the loss of context for surface artifact distributions, or the destruction of sites from trespassing vehicular traffic, inadvertent oil spills, and unauthorized ground disturbances. Land managers and archeologists alike find themselves in the position where no one has a good grasp of what data various kinds of sites contain and what questions important in history and prehistory those data might address. Accordingly, management decisions are hindered by the lack of knowledge of the information contained within these properties. This PA acknowledges that these cumulative and indirect effects are taking place and creative, alternative, targeted mitigation strategies need to be devised for resolution of adverse effects; and

C. Whereas, a cultural resource technical program review conducted by the BLM and the SHPO for BLM lands in southeast New Mexico was released in March 1996, and the joint SHPO-BLM team advocated adoption of:

1. Other options besides site avoidance to avoid adverse effects, including testing and various levels of mitigation.

2. An agreement to designate where minimal or no Class III survey would be required, based on the number and density of past inventories, site density, predictive models, and intensity of development.

3. A commitment by all parties to devise progressive, creative strategies to enable the BLM to meet its Section 106 responsibilities that recognize the shortcomings of relying on avoidance as a management strategy; and

D. Whereas, the BLM and SHPO have worked closely together to advance research in southeast New Mexico since 1998 (See Appendix G) including: 1) establishing the Southeast New Mexico Roundtable Workshops; 2) the study titled *A Field Guide to the Geoarchaeology of the Mescalero Sands, Southeast New Mexico* (Hall 2002); 3) the preparation of the *Southeast New Mexico Regional Research Design and Resource Management Strategy* (RRD) prepared by the Office of Contract Archeology, University of New Mexico (Hogan 2006); and 4) preparing an updated version of the RRD entitled *Permian Basin Research Design 2016 – 2026* (Railey 2016); and

E. Whereas, in 2001, the Department of Energy funded a Preferred Upstream Management Practices (PUMP III) study titled *Adaptive Management & Planning for Cultural Resources in Oil & Gas Fields: New Mexico PUMP III Project* (Sebastian et al. 2005), which offered a number of recommendations for more effective management of cultural resources and more meaningful information retrieval through their study; and

F. Whereas, threats to the long-term preservation of archeological properties in southeast New Mexico are coming from regional environmental changes as well; and

G. Whereas, the BLM is responsible, through appropriate planning, to preserve, protect, and minimize harm to the historic and archaeological properties under its care and administration pursuant to Sections 106 and 110 of the NHPA, as amended, and meets these responsibilities pursuant to the, *Programmatic Agreement Among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in which the BLM will meet its Responsibilities under the National Historic Preservation Act* (BLM National Programmatic Agreement), pertinent BLM manuals and handbooks, and follows the process detailed in the Protocol; and

H. Whereas, the 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 Federal and State laws and assists Federal agencies to meet their responsibilities pursuant to the NHPA, as amended, 54 U.S.C. 306108; and

I. Whereas, the BLM has notified the ACHP; and the ACHP has elected to participate in the development of this amended agreement and resolution of adverse effects; and

J. Whereas, the BLM is responsible for government-to-government consultation with Indian Tribes and in development of this PA has consulted with the Pueblo of Isleta, the Mescalero Apache Tribe, the Comanche Indian Tribe, the Kiowa Tribe of Oklahoma, the Ysleta del Sur Pueblo, the Apache Tribe of Oklahoma, and the Hopi Tribe in order to solicit Tribal identification of sacred sites and traditional cultural properties that may exist within the Project Area and require protection; and

K. Whereas, the BLM has consulted with Indian Tribes cited above that have had cultural and historical ties to the Project Area covered by this PA, has taken their concerns into account, and has invited the Tribes to sign the PA and participate in its implementation as concurring parties; and

L. Whereas, interested members of the public, including the New Mexico Archeological Council (NMAC), the New Mexico Oil and Gas Association (NMOGA), and the Independent Petroleum Association, have been provided opportunities to comment on this PA and have also been invited to sign it as concurring parties; and

M. Whereas, the BLM has established a Permian Basin PA Advisory Workgroup (Workgroup) made up of the BLM Deputy Preservation Officer/State Archeologist, BLM Pecos District cultural resource staff, SHPO, ACHP, NMAC, academic archaeologists, or others with research interests in southeast New Mexico, representatives of Native American Tribes, and representatives of participating industries to provide advice and assistance regarding the design and implementation of the mitigation measures described in Section VI.F below; and

N. Whereas, within 90 days of execution of the initial Permian Basin Agreement, the BLM hosted the first meeting of the Workgroup. The purpose of the meeting was to clarify

procedures; reach a common understanding of the role of the Workgroup in site selection and input into treatment measures that would be contracted; and discuss Workgroup participation in delivery order formulation, administration, and report review;

O. Now, therefore, the Signatories agree to implement the following Section 106 procedures for participating projects in specified locations within southeast New Mexico. The BLM shall ensure that the stipulations described within this PA are carried out.

III. Authorities

A. The NHPA of 1966, as amended, 54 U.S.C. §306101 et seq. including 54 U.S.C. §306107;

B. The BLM National Programmatic Agreement, February 9, 2012; and

C. The current Protocol between BLM and SHPO

IV. Scope of PA

A. Roles and Responsibilities of PA Participants

1. Applicants that voluntarily choose to use the PA will acknowledge their responsibility to safeguard archeological site location information supplied to them and will design projects to avoid recorded archeological sites by 100 feet, unless the BLM agrees that an alternate avoidance distance is sufficient to protect recorded sites and approves an exception. Applicants will complete the following forms: a "Proffer of Monetary Contribution" (Form 4120-9) acknowledging that all contributions to the PA are voluntary (Appendix F); complete an "Archeological Data User Agreement" form and insure that archeological site location information will be used only for project purposes (Appendix E); and submit a "Confirmation of Payment Form" (NM 8140-9) for each project submitted for processing under the PA (Appendix C).

2. BLM will implement the PA by providing a PA Coordinator; maintain a Geographic Information System (GIS) database to map PA projects and other related databases to track PA contributions; review and approve submitted applications for PA projects; hold annual meetings of the PA Workgroup; develop Statements of Work for PA research contracts and submit them to the BLM contracting system; disseminate the results of PA research to the Workgroup, archeological researchers, and the general public; consult with tribes and pueblos on a government-to-government basis about the PA; and consult on a regular basis with the SHPO about the administration of the PA, about Statements of Work for research contracts and about progress in addressing mitigation priorities and research questions. The BLM, in consultation with the SHPO, will have final approval for any proposed research carried out under the PA. The BLM will provide a Federal Assistance Agreement to the SHPO for the purpose of supporting research in or related to the PA Area.

3. The SHPO will attend meetings of the Workgroup; recommend research projects; review Statements of Work for proposed research contracts and review resulting draft reports;

consult with the BLM on the operation of the PA and on proposed research topics; and administer the Federal Assistance Agreement contracts, in coordination with the BLM.

4. The ACHP will monitor the implementation of the PA and provide dispute resolution for any disagreements in the implementation of the PA that might arise between the SHPO, the BLM, and Consulting Parties.

5. The Workgroup, in accordance with Section II. M of this PA will keep abreast of progress made in addressing questions contained in the *Permian Basin Research Design 2016 - 2026* and provide recommendations for future research projects. Individual Workgroup members may provide advisory comments on Statements of Work for proposed contracts or advisory reviews of draft reports prepared by contractors.

B. Project Area Covered by this PA

1. The Project Area consists of 7.5 minute U.S. Geological Survey quadrangle maps, or portions of quadrangle maps, depicted on the map in Appendix A. This area was not defined by any specific project proponent; nor does it cover the area of potential effect tied to any specific undertaking.

2. Additional quadrangle maps, or portions of quadrangle maps, may be added to the Project Area if BLM demonstrates to the signatories that the proposed additions are identified as an area for development; that the proposed additions contain BLM surface managed land or BLM minerals; and are contiguous to the Project Area; and that they have sufficient inventory and analysis of cultural resources using predictive models or other methods to make them eligible to be added to the PA Project Area. Sufficient inventory is defined as approximately 20% inventory, provided the survey space is more or less evenly distributed across BLM and private land. If private land has not been sufficiently inventoried, the amount of urban development and the potential for cultural resources should be considered before making a determination that the area is eligible to be added to the Project Area. The process for adding quadrangles is the same as for amending the PA pursuant to Section XII.A.

3. Although the Project Area may include New Mexico State Trust Land or land managed by other agencies or subdivisions of the State of New Mexico, this PA does not apply to that land.

4. This PA applies to private surface managed land within the Project Area, provided that the application of the PA is for federal undertakings that are located on the private land.

C. Undertakings Covered by this PA

1. The BLM will implement this PA for federal undertakings associated with the development of oil and gas infrastructure, for undertakings associated with the potash industry, or for other industrial undertakings within the Project Area when the BLM is the lead agency. The BLM will implement this PA for such undertakings on a project-by-project basis when applicants elect to participate pursuant to Section V.A 1-3. Portions of undertakings that extend beyond the Project Area will be subject to the Protocol between the BLM and SHPO.

2. Examples of undertakings eligible for approval under the PA are: seismic exploration, well pads, access roads, power distribution lines of 115kV or less, substations, pipelines, frac pits, recycling pits, drill islands, tank batteries, pump stations, telephone lines, fiber optic cable lines, and exploratory potash core holes. Other types of undertakings may be eligible and will be considered by the BLM, in consultation with the SHPO, on a case-by-case basis. All undertakings must avoid recorded eligible and undetermined sites by 100 feet, unless the project is located within previously disturbed ground; there is a physical barrier that will provide protection for a site located less than 100 feet away; or another avoidance distance is appropriate taking into account the type of undertaking and type of historic property. BLM may consider other mitigation in consultation with the SHPO.

D. Undertakings Not Covered by This PA

1. Where applicants decline to contribute funds equivalent to what they normally would pay for archeological inventories, as detailed within Section V.A., the BLM shall proceed in accordance with the procedures outlined within the Protocol.

2. Protocol procedures will apply to those portions of Federal mineral leases that extend beyond the boundary of the Project Area (see Appendix A); to projects such as intrastate transmission lines larger than 115 kV; to potash development requiring surface mining plans of operation within or extending beyond the boundary of the Project Area; and to cell towers.

3. If another federal agency is lead agency (per 36 C.F.R. § 800.2(a) (2)) for an undertaking under the scope of this PA, such an undertaking will be reviewed by such a lead agency under its applicable Section 106 process so long as the BLM, all other federal agencies with Section 106 responsibilities for the undertaking, and all relevant Indian tribes agree to this in writing. In case of such an agreement, the lead agency will act on behalf of BLM and the other federal agencies, fulfilling their collective responsibilities under section 106 for the undertaking at issue.

4. The 36 CFR 800 regulations will apply to interstate projects, including transmission lines and highways; to complex multi-agency programs or multi-phased undertakings; to undertakings where the ACHP participates; and to undertakings that are determined by the BLM or the SHPO to be subject to unusual public attention or involve strongly opposing viewpoints, among other factors (see Section I.E. in the Protocol).

5. Projects, or portions of projects, located on New Mexico State Trust Lands, or land managed by other agencies or subdivisions of the State of New Mexico, are not covered by this PA.

V. Funding Sources and Allocations

This PA is voluntary and has no committed source of funding; therefore, a variety of funding strategies will be followed in the hopes of implementing this comprehensive mitigation program within the Project Area. Nothing in this PA binds any party beyond their respective authority. Any commitment of funding will be outlined in a separate funding document made in writing by

representatives of the parties and shall be independently authorized by appropriate statutory authority. Nothing in this PA shall be construed as binding the BLM to expend in any fiscal year any sum in excess of the appropriations made by Congress for the purposes of this PA in that fiscal year.

A. Sources

1. The principal funding stream will derive from contributions that applicants voluntarily agree to pay in advance, pursuant to the requirements of Form NM 8140-5, "Confirmation of Payment" (Appendix C), on a project-by-project basis into a mitigation fund received and managed by the BLM. The contributions will be for those projects that will no longer require archeological inventories within the Project Area. The cost to industry per project will include the average cost of a Class III pedestrian survey for oil and gas well pads and associated linear infrastructure and the types of Class II surveys traditionally required for seismic projects of a similar type and size. These costs include the expenses associated with the pedestrian surveys, including site and project registration, and report preparation, plus the time value of not having to pay for project redesigns or reroutes necessitated by the identification, avoidance, or treatment of historic properties that could be affected by industrial-related development undertakings within the Project Area.

2. A joint committee comprised of oil and gas companies, NMAC, the BLM, the SHPO, and a representative from NMOGA met and determined appropriate industry fees to be contributed into the mitigation fund in lieu of paying for Class III inventories of comparable size and types of development projects. This fee schedule, which includes an annual inflation adjustment factor, is provided as Appendix B.

a. The rates in the fee schedule in Appendix B will be adjusted annually.

b. Unit prices for each item in the fee schedule will be increased by the rate of inflation in the Consumer Price Index, as determined by the Bureau of Labor Statistics, for each year this PA is in effect. Inflation adjustments to unit prices will occur January 1 of each year.

c. Adjustments to the funding formula in Appendix B are not amendments to the PA and do not require compliance with Sec. XII.

d. Adjustments to the funding formula in Appendix B will be posted on the BLM New Mexico cultural resources partnerships and research web page (http://www.blm.gov/nm/st/en/prog/more/cultural_resources/research_and_partnerships.html) and on the BLM Carlsbad Field Office web page (http://www.blm.gov/nm/st/en/fo/Carlsbad_Field_Office.html).

3. Appendix C confirms that the applicant has elected to have the BLM follow the procedures specified within this PA for the undertaking rather than the Protocol to meet the agency's Section106 obligations. Appendix C consists of the "Confirmation of Payment Form," (NM 8140-9) that the BLM will use to confirm an applicant's payment into the mitigation fund for specific projects in accordance with the fee schedule currently in effect. The form verifies that 1)

after having paid into the mitigation fund for the project(s) specified, the BLM will not require Class III inventories for these specific undertakings, and 2) as soon as the BLM receives and verifies that the appropriate level of funding has been provided by the applicant to the mitigation funds, and that the other requirements of the National Environmental Policy Act (NEPA) have been met, the BLM will notify the applicant that they may commence work.

B. Allocation

1. The BLM, in consultation with the SHPO, will determine the allocation of PA funds for each year. This allocation will occur within the month following the annual meeting of the Workgroup and it will be based upon the balance of funds in the PA account, the Workgroup's research priority recommendations, progress made in meeting the mitigation priorities contained in Section VI.F. of the PA, and the funding requirements of the Assistance Agreement between the BLM and the New Mexico Department of Cultural Affairs – Historic Preservation Division.

2. The Workgroup will at its annual meeting recommend priorities for research projects for the following year. At three-year intervals (2019, 2021, and 2024) the Workgroup meeting will specifically review the projects that have been completed since the beginning of the program in 2008 and evaluate the progress made in addressing the questions posed in the *Permian Basin Research Design 2016 – 2026*. The results of this review will guide the Workgroup's recommendations of priorities for future research projects.

3. At the end of the eighth year of this PA (no later than May 2024) the Workgroup, SHPO and BLM will evaluate the *Permian Basin Research Design 2016 – 2026* to determine if it requires revision. If the Research Design is found to require revision, the BLM will award a task order to revise it and to synthesize all data produced through this program and other research relevant to the Permian Basin via the Permian Basin PA contract in effect at the time. The task order will assess progress in addressing questions posed in the Research Design based on the results of the excavation, testing, survey, data recovery, or other forms of mitigation. Such a refinement of the Research Design will reflect current theory and other relevant work in the region. The updating will recast and reprioritize research questions, modify definitions and site typologies, and modify testing and excavation fieldwork standards. This synthesis will be printed and distributed as part of the New Mexico Cultural Resources Publication Series. Copies of the report will be provided to the signatories. If the Research Design is not found to require revision, requirements for re-evaluation will be included in the 2026 revised PA.

4. A Federal Assistance Agreement has been entered into between the BLM and the New Mexico Department of Cultural Affairs – Historic Preservation Division to fund cultural resource studies in or relevant to the Permian Basin through contracts administered by the Department of Cultural Affairs. This Assistance Agreement will be continued during the life of the PA and will be funded at a figure of not less than $100,000 per grant cycle, unless funds are not available.

VI. Section 106 Procedures Under This PA

Basic procedures that the BLM will follow to meet its Section 106 obligations within the Project Area are summarized in a flowchart in Appendix D. These steps are described in detail below:

A. Avoidance of Previously Identified Historic Properties

1. The BLM will require applicants to avoid those historic properties already identified and determined by the BLM, or the BLM and the SHPO through a consensus determination, to be eligible for listing in the National Register of Historic Places (historic properties) and those properties whose National Register eligibility is undetermined. Both of these types of properties will be avoided by a buffer of 100 feet, unless the project is located within previously disturbed ground; there is a physical barrier that will provide protection for a property located less than 100 feet away; or another avoidance distance is appropriate taking into account the type of undertaking and type of historic property. BLM may consider other mitigating circumstances in consultation with the SHPO.

2. If a future undertaking is unable to avoid adverse effects to previously identified historic properties, the BLM will require the applicant to carry out an appropriate mitigation program, as determined by the BLM and the SHPO, and paid for by the applicant separate from the mitigation fund. For prehistoric and protohistoric resources, the mitigation program will take into account, at a minimum, site types, research domains, and field methods developed in the *Permian Basin Research Design 2016 – 2026* or mitigation priorities in Section VI.F. The mitigation program's treatment of adverse effects to National Register eligible historic-era resources within the Project Area will require that cultural resource permittees hired by the applicant develop and implement site-specific research designs independent of the *Permian Basin Research Design 2016 – 2026* or treat the site within property-specific contexts developed in accordance with Section VI.F.2.

3. If a future undertaking is unable to avoid previously identified properties of undetermined eligibility, the BLM will require applicants to provide sufficient additional information from test excavations and other appropriate studies for the BLM to make National Register eligibility determinations following the procedures outlined in the Protocol. Any sites found to be eligible will be added to the database of sites that must be avoided or mitigated within the Project Area. Determinations of National Register eligibility under Criterion D will take into consideration the potential of the property to address high-priority research questions articulated in the *Permian Basin Research Design 2016 – 2026* and any supplementary documents, such as historic contexts or other research designs. If determined eligible, the applicant will be required to pay for and carry out an appropriate mitigation program as defined in Section VI.F. independent and outside of the mitigation fund.

4. The BLM may require that applicants hire qualified archeologists to monitor the effects of construction and land disturbance in areas adjacent to identified historic properties or properties whose eligibility remains undetermined. Adverse effects shall be avoided. If adverse effects cannot be avoided, the BLM shall require the applicant to pay for and carry out an appropriate mitigation program separate from the mitigation fund.

5. The BLM will not require applicants to avoid cultural resources that have been determined by the BLM, or the BLM and the SHPO through a consensus determination, to be "not eligible" for listing in the National Register of Historic Places.

B. Identification of Historic Properties and Compliance with the National Environmental Policy Act (NEPA)

1. When an applicant elects to participate in the PA, standard Class III inventories will no longer be required pursuant to the Protocol for industrial-related development undertakings within the Project Area.

2. The BLM will continue to consult with Indian Tribes to identify traditional cultural properties, sacred sites, or use areas within the Project Area when new Federal leases are proposed, when the Carlsbad or Roswell Field Office Resource Management Plans are updated, and in accordance with Section VI. F. 3 below. Should any of these cultural resources be identified, the BLM will record them and determine their National Register eligibility in consultation with the concerned Indian Tribe. The BLM will also determine if any proposed undertakings in their vicinity could affect them. Any such sites found to be National Register eligible will be added to the database of sites that must be avoided or mitigated within the Project Area. If proposed undertakings could adversely affect these historic properties, the BLM will consult with the Indian Tribe to devise appropriate mitigation strategies. Mitigation may include but not be limited to the mitigation approaches described within Section VI.F.

3. Environmental Assessments prepared for projects within a Project Area will reference this PA as evidence that cultural resources were considered and will be treated in accordance with its terms. Such NEPA documentation will acknowledge that adverse effects to historic properties will occur but will be at least partially mitigated through the treatments described in the PA. Mitigation actions carried out pursuant to the terms of the PA will likely be considered a categorical exclusion under NEPA, subject to federal law and the BLM NEPA Handbook.

C. Discoveries

1. If during the course of construction activities an applicant discovers new, previously unrecorded cultural resources, excluding all skeletal remains that might be human or any funerary objects, the applicant will not be required to avoid them and may proceed without any authorization from the BLM.

2. However, if any skeletal remains that might be human or funerary objects are discovered by any activities during an undertaking, the applicant will cease activities in the area of discovery, protect the remains, and notify the BLM within 24 hours. The BLM will determine the appropriate treatment of the remains; if they are cultural items subject to the Native American Graves Protection and Repatriation Act (NAGPRA), the BLM will do so in consultation with culturally affiliated Indian Tribe(s) and lineal descendants. If they are on private land, the provisions of the *Cultural Properties Act (NMSA 1978 Section 18-6-11.2)* will be followed. Applicants will be required to pay for treatment of the human remains and cultural items independent and outside of the mitigation fund.

3. Once the BLM has verified that the requirements of NAGPRA or the Cultural Properties Act have been met, the BLM will authorize the applicant to proceed.

4. The BLM, at any time and without prior notice, may monitor ongoing construction for compliance with this stipulation.

D. Determinations of National Register Eligibility

1. Determinations of site eligibility resulting from any new surveys carried out as a form of mitigation within the Project Area will follow the procedures outlined within the Protocol.

2. Determination of a property's qualifications for inclusion in the National Register under Eligibility Criterion D ("have yielded or have the potential to yield, information important in prehistory or history") will be based upon the potential of properties to address, at a minimum, high-priority research questions articulated in the *Permian Basin Research Design 2016 – 2026* and any supplementary documents, such as historic contexts or earlier research designs.

3. Any sites found to be eligible will be added to the database of sites that must be avoided or mitigated within the Project Area.

E. Decisions Regarding Mitigation Program Priorities

1. The principal focus of treatment measures will be on the excavation, testing, survey and other forms of research at high-priority sites within the Project Area. The BLM and the SHPO will coordinate annually to discuss the status of treatment measures, the mitigation fund, and their respective efforts to obtain State and Federal funding to contribute to the mitigation program.

2. At Workgroup meetings, the priorities, timelines, and benchmarks for all treatment measures will be discussed. These priorities will be revisited as progress is made and results are forthcoming for the different treatment measures carried out. Contracts and Assistance Agreements will be awarded pursuant to applicable procurement regulations.

3. The BLM will convene meetings of the Workgroup at a minimum annually, unless sufficient funding is not available to implement treatment measures.

4. The BLM will provide copies of proposed mitigation measures to be achieved through individual contracted task orders, as discussed with the Workgroup, to the SHPO, who will be afforded 30 days to provide comments. If the SHPO objects to the scope and adequacy of the treatment measures, the BLM and SHPO shall consult to reach an agreement. If agreement is not reached within 30 days, the BLM may choose to continue to work with the SHPO or the documentation shall be provided by the BLM to the ACHP for their comments. ACHP comments shall be provided to BLM within 30 days. The BLM will take the ACHP's comments into consideration in making a final decision on the treatment measures.

5. Based on the input provided in subparts 2-4 above, the budget that is available, and

the labor and analyses costs tied to a BLM contract, the BLM will prepare a final task order and will award and administer the contract for mitigation or special studies.

F. Mitigation of Adverse Effects and Improvements in the Management of Cultural Resources

The BLM, in consultation with the SHPO, will carry out one or more of the following treatment measures using funds contributed by the applicants according to Section V.A.1.-2. The treatments have been designed to address the cumulative effects of full-field oil and gas development, coupled with other industrial related developments, and the loss of cultural resources resulting from the authorization of new surface-disturbing undertakings without the requirement for new inventories and protection or mitigation of effects of the undertakings on those resources. While it is expected that the principal focus will be on the excavation, testing, and other mitigation measures appropriate to surface sites, both the BLM and the SHPO acknowledge the need to improve a broad range of archeological practices in the Section 106 process within the Project Area.

1. Excavation and Testing.

a. The BLM, in consultation with the SHPO, will:

(a.1) Consult with the Workgroup to select historic properties for excavation or testing when it appears that their study can address, at a minimum, high-priority research questions identified in the *Permian Basin Research Design 2016 – 2026* and supplementary documents; assist in understanding the surface-subsurface relationships and the information content available from intensive study of surface and near-surface contexts involving the study of thin shallow cultural deposits so common in the archaeological record of southeastern New Mexico; and further the ability of the BLM and SHPO to make accurate determinations of eligibility. Site selection will take into account 1) the data potential at candidate site(s), 2) progress that is being made to address the high-priority research questions from the *Permian Basin Research Design 2016 – 2026* and supplementary documents, and 3) conditions of site integrity. Investigations will focus on those resources in southeast New Mexico that are best able to address questions concerning cultural transformation, adaptation, and interaction.

(a.2) Recommend projects that will provide new insights into the physical integrity of archeological sites, especially within less-well known areas of the sand sheet, and other geomorphic deposits. As the role and importance of particular site types in past human adaptation to the environments in the region becomes known, the BLM and the SHPO will be positioned to make informed decisions regarding site protection, interpretation, and public use. It is expected that the mitigation program will include and incorporate test excavations of sites and site-specific geomorphological assessments, utilizing trenching and other appropriate investigative techniques that will determine the stratigraphic position of the site within the sand sheet or other site-related deposits. It is also expected that this effort will focus on learning how to best extract the information content from thin shallow cultural deposits.

b. The excavation and testing will focus on:

(b.1) Projects that "address the cumulative effects of full-field oil and gas development" through archeological research, with an emphasis on the prehistoric record; research that uses innovative or experimental methods, processes, or concepts to advance the study or practice of archeology; studies that are cooperative projects with Indian Tribes and Pueblos in order to integrate pueblo/tribal perspectives on excavation and testing studies; and projects that insure compliance with Section 106.

(b.2) The relationship between surface and subsurface components of archeological sites. This research will involve comparison of original inventory site record forms with data from more detailed surface recordation and artifact analyses from excavations. This research will utilize information available from surface and near-surface contexts involving the study of thin shallow cultural deposits and recording information at these sites in a different manner, asking different questions about the sites, and applying new analysis procedures to them. The goal of this research is to explore how these more surficial properties might also contribute significantly to our understanding of human use and adaptation in this region. The purpose of these studies will be to improve our ability to assess site data potential from observations made during site recordation. Results of this research will be utilized to improve inventory procedures and site recordation requirements throughout southeast New Mexico.

(b.3) Using site-specific testing and excavation data, along with other studies, to evaluate the large-scale geomorphological mapping units (Hall 2002; Hall 2006) and the geomorphic synthesis of Hall and Gobel (2016) to predict the presence and integrity of intact, buried cultural deposits. The purpose of these studies will be to make recommendations on the best and most cost-effective way to obtain and use geomorphological data to assist in designing future inventories in southeast New Mexico. Any geomorphological studies carried out in association with archeological excavations will be carefully placed so that results are not compromised by the archeological deposits.

2. Contract Content

Contracts issued through the PA should make effective utilization of lithic source analysis, chronological and chronometric studies, ceramic and petrographic analysis, faunal studies, archeobotanical investigations, and analyses of other types to support an understanding of prehistoric processes that operated in southeast New Mexico.

3. Traditional Cultural Property Surveys

A Traditional Cultural Property (TCP) Survey of places important to the Mescalero Apache Indian Tribe will be completed by the end of the fifth year of the PA (no later than May 2021). TCP surveys, or other types of studies related to cultural resources, with other interested tribes or pueblos will be given priority in the Workgroup's annual research recommendations, if such studies are requested. TCP surveys will conform to the requirements of *National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties.* Identified TCPs will be added to the BLM GIS and be managed as eligible sites.

4. Historic Contexts

Historic components make up less than 3 percent of the archeological components of the Project Area. Adverse effects to historic-era properties will principally be addressed through development of historic contexts and will be based on archival research and oral history interviews as appropriate, but may include archeological studies. Historic contexts provide a framework for decisions about the planning, identification, evaluation, registration and treatment of historic properties based upon comparative significance. Historic context studies provide an overview, references to current research involving the sites, and standards for recordation and evaluation, photography, and mapping. They clarify the role and impact particular types of historic-era properties had in southeast New Mexico. Contexts provide guidance on property types and corresponding integrity and National Register eligibility criteria and should include research to identify specific sites that are historically important and that may have significant remaining structures.

a. Additional context studies may be developed for ranching in southeastern New Mexico, industrial potash development, the development of irrigation in southeastern New Mexico, and the identification and evaluation of Native American sites. The BLM will consult with the SHPO and the Workgroup to prioritize these context studies beginning with the 2016 Workgroup annual meeting.

b. The BLM, following consultation with the Workgroup, may recommend historic property treatment programs for historic-era properties that may include archival research, oral interviews, mapping, testing, or excavation.

5. Additional Surveys

The BLM, SHPO, and the Workgroup will decide whether additional Class II, Class III, or thematic surveys are needed to fill in gaps in inventory coverage within the research sampling units identified in the *Permian Basin Research Design 2016 – 2026.*

6. Geomorphological Mapping

Geomorphological mapping at a 1:24,000 scale, beyond the Loco Hills study, beginning with a pilot study in an appropriate area will be implemented based on areas identified in the report *Archeological Sensitivity Modeling in Southern New Mexico* as having high potential for subsurface cultural remains. Areas identified by the model, in combination with aerial photographic interpretation and mapping followed by field checks will help determine the areas most likely to contain intact, buried cultural deposits. Such data can be an important factor in selecting sites for excavation or testing, and can also be used to refine the model so that high potential areas for subsurface cultural remains can be identified more accurately. The study may include geomorphological investigations as part of the requirements for pipeline projects or other large-scale undertakings.

7. Predictive Models

Site density/predictive models were developed for the PUMP III study and a similar

model entitled, *Archaeological Sensitivity Modeling in Southern New Mexico*, was completed in 2013. These site density models predict the number of sites per acre, based on a set of environmental variables. The BLM, following consultation with the Workgroup and SHPO, as provided in Section VI.E., will award a contract to refine the *Archaeological Sensitivity Modeling in Southern New Mexico*. This model reflects how different types of sites by different time periods are distributed across the landscape. It also distinguishes between common and rare resources and differentiates prehistoric sites from resources of other time periods. This more refined model will be useful for planning developments within the Project Area to avoid impacting historic properties; for use and testing in surrounding regions to devise appropriate survey strategies; to determine if quadrangle maps proposed for addition to the PA area will qualify; and to assess the likely effects of proposed developments.

8. New Standards for Survey

a. The BLM, in consultation with the SHPO, will develop new standards for recording sites within the Project Area taking into account the *2012 Carlsbad Field Office Recording Standards*, the report *An Assessment of Transect Recording Unit Survey and Subsurface Testing Methods at Four Sites in the Permian Basin, New Mexico*, by Statistical Research, Inc., the report *Selection of Sites to Address Questions in the Southeastern New Mexico Regional Research Design: A Landscape Approach*, by SWCA, and the report *Permian Basin Research 2016-2026*, by SWCA, and may include other studies agreed to by the BLM and SHPO. The new standards will address the seven points listed below. This consultation will begin in February 2017 and end no later than February 2019.

(a. 1) Site boundary definitions;

(a. 2) Mapping features;

(a. 3) Descriptions and recordation of features and artifact assemblages;

(a. 4) Test excavations to identify the potential for buried cultural deposits;

(a. 5) Site-specific geomorphological assessments of integrity of cultural deposits;

(a. 6) Determination of site eligibility; and

(a. 7) Any other needed improvements in site survey techniques or recordation procedures revealed through this mitigation program.

b. The BLM and SHPO will consult with NMAC, BLM cultural resource use permittees, the Workgroup, and other interested parties to consider improved survey and site documentation standards prior to implementation.

c. Before requiring any new standards for inventory, site recording, or evaluative techniques, the BLM in cooperation with the SHPO will contract for training programs to

familiarize cultural resource permittees, contractors, and applicants with proposed new requirements. The BLM in consultation with the Workgroup will craft the contract specifications and evaluate the training proposals. Qualified instructors with appropriate local experience familiar with the regional archeology will present one or more workshops.

d. The BLM will monitor the implementation of the new recording standards and present a report to the SHPO, the Workgroup, and to the contractors working in southeastern New Mexico no later than two years from the anniversary of the institution of the new standards. The report will describe any problems with implementation and evaluate the utility of the site forms received using the new standards to address the points listed above. The report will also contain recommendations for correcting any problems noted.

9. Data Management

The SHPO and the BLM will explore new procedures for real-time electronic submission of inventory data, site records, reports, and associated records into NMCRIS.

VII. Annual Reports and Assessment

Assessments of the results of this alternative Section 106 process, including progress made regarding each of the treatment measures described in Section VI.F., will be reported by the BLM at the annual meeting of the Workgroup and through the *Permian Quarterly* newsletter. The BLM will assess a sample of approved projects consisting of those eligible for processing under the PA, but that are completed using traditional Section 106 survey, and monitor a selected number of projects processed using the PA. An assessment of the impacts to archeological resources within the Project Area from implementation of the PA will be made annually. A discussion on the results of the assessment will be reported in an article published in the September edition of the *Permian Quarterly* newsletter for each year the PA is in effect.

VIII. Native American Tribal Government Participation

A. The BLM will continue to consult with Native American Tribes regarding the PA procedures and invite their continued participation.

B. The BLM will continue to consult with Tribes to identify traditional cultural properties, sacred sites, or use areas that may not have been identified by prior Class II or Class III archeological inventories within the Project Area.

C. The BLM will consult with Tribes as provided for in the Protocol.

D. All consultations will follow the guidance provided within the BLM Manual 1780, *Tribal Relations* and BLM Manual Handbook H-1780-1, *Improving and Sustaining BLM-Tribal Relations.*

E. The BLM will provide the Tribes with copies of the *Permian Quarterly* newsletter.

IX. Public Participation

A. BLM and the SHPO will consult with the NMAC, IPANM, and NMOGA members on the results of this program as they become available.

B. The BLM will provide signatories to this agreement copies of the public education products and notices of events.

C. The BLM and the SHPO will sponsor a colloquium, five years after signing of the PA, (no later than May 2021) to discuss work performed under the PA and other cultural resources studies relevant to cultural resources work in the Project Area to coincide with the biennial Jornada-Mogollon Conference in El Paso, the New Mexico Archeological Council Fall Conference or other venues agreed to by the BLM and SHPO.

D. The BLM and the SHPO will fund and organize a public conference in southeast New Mexico to explain the results of the mitigation program to local communities, the public, industry employees, public officials, and amateur archeological societies. This public conference will be held when substantial results are available to share with the public, but, in any event, no later than the seventh year of this PA (no later than May 2023).

X. Periodic Program Assessment

A. Within five years (no later than May 2021) of the completion of the *Permian Basin Research Design 2016 – 2026,* the SHPO, in cooperation with the BLM, will prepare and disseminate a popular summary of the research results for a public audience. It will condense key results of this mitigation program in nonscientific, layman terms. Popular summaries will acknowledge the industry contributors and will explain to local communities how the scientific study of southeast New Mexico archeology is advancing our understanding of cultural adaptation. Copies of the report will be provided to the signatories.

B. As funding permits, new heritage education curriculum materials, based on the results of the data recovery and other studies, will be developed by the BLM in cooperation with the SHPO.

C. During the ninth year of the PA (May 2024 - May 2025), the BLM and the SHPO will convene an evaluation meeting with all consulting parties to the PA to assess its effectiveness. Based on the results of the evaluation, the BLM, SHPO, and ACHP may or may not 1) modify procedures herein; 2) extend the PA for a defined period of time; or 3) make the PA provisions permanent through an amendment to the Protocol. Without explicit written agreement between the signatory parties at the end of the formal assessment 10 years after this PA is executed (May 2026), the PA will terminate.

D. Seven years after this PA has been executed (no later than May 2023), the BLM will prepare or award a delivery order to prepare a report that identifies ways the BLM can improve management of historic properties in the Project Area. The report will be based upon the results of studies performed under the PA or relevant to the Project Area and will be made available to

the signatories. Recommendations of this report will be taken into account by both the BLM and the SHPO in determining whether to extend the PA and when negotiating new versions of their Protocol Agreement.

XI. Dispute Resolution

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

A. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP shall provide BLM with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. BLM will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.

C. The BLM's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remains unchanged.

XII. Amendments and Termination

A. Any signatory to this PA may request that it be amended by informing the BLM in writing of the reason for the change and the proposed amendment language, whereupon the BLM shall consult with the other parties to this PA to consider the amendment. This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

B. Any signatory may terminate this PA by providing a 60-day notice to the other signatories provided that they consult during this period to seek agreement on modifications to the PA. If the signatories are unable to resolve the differences within that period (or longer period if agreed to by all signatories), the PA will be terminated and Section 106 compliance procedures for the Project Area will revert back to standard compliance processes provided for in the Protocol.

C. If this PA is terminated, any on-going contracts will be completed and their final reports produced. Then, any funding remaining will be used in accordance with Section X.D.

XIII. Definitions

A. *Cultural resources* mean a definite location of human activity, occupation, or use identifiable through field inventory (survey), historical documentation, or oral evidence. The term includes archeological, historic, or architectural sites, structures, or places with important public and scientific uses, and may include definite locations (sites or places) of traditional cultural or religious importance to specified social and/or cultural groups. Cultural resources are concrete, material places and things that are located, classified, ranked, and managed through the system of identifying, protecting, and utilizing for public benefit. They may be but are not necessarily eligible for the National Register.

B. *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. The term includes artifacts, records, and remains that are related to and located within such properties and also includes properties of traditional religious and cultural importance to an Indian Tribe that meet the National Register criteria. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register criteria and all other properties that have been determined by the BLM, or the BLM and the SHPO through a consensus determination, to be eligible for listing in the National Register.

C. *Class II survey or inventory* means a sample survey that covers less than 100 percent of the target area. They are usually statistically based samples designed to help characterize the probable density, diversity, and distribution of archeological properties in a large area by interpreting the results of surveying limited and discontinuous portions of the target area.

D. *Class III survey or inventory* means a continuous, intensive survey of an entire target area, aimed at locating and recording all archeological properties that have surface indications, by walking close-interval parallel transects until the area has been thoroughly examined.

E. *Historical-era resources* mean cultural resources that post-date A.D. 1600 in southeast New Mexico.

F. *Time value* means the financial savings that would occur to industry from not having to include considerations pertaining to cultural resources in their decision-making processes. These indirect savings include, but are not limited to, not having to fund reroutes and the redesign of projects; paying for equipment down-time; funding follow-up surveys of alternative locations; unorthodox drilling procedures; less than optimum seismic data when grid patterns are adjusted to avoid sites; and unpredictable schedules.

XIV. Signatures

Separate pages to follow for each party.

A. Signatory Party:

Bureau of Land Management, New Mexico

By: _____ **Date:** 4-13-16

Amy Lueders

Title: **State Director**

A. Signatory Party:

Advisory Council on Historic Preservation

By: John M. Fowler **Date:** 4/29/16

John M. Fowler

Title: **Executive Director**

A. Signatory Party:

New Mexico State Historic Preservation Officer

By: _____ **Date:** 4/14/16

Jeff Pappas

Title: State Historic Preservation Officer

B. Concurring Party:

Independent Petroleum Association of New Mexico

By: _____ **Date:** 4-26-2016

Mitch Krakauskas

Title: **President**

B. Concurring Party:

New Mexico Oil and Gas Association

By: _____ **Date:** 4/14/16

Steve Henke

Title: **President**

B. Concurring Party:

New Mexico Archeological Council

By: Cherie K. Walth **Date:** April 18, 2016

Cherie Walth

Title: **President**

B. Concurring Party:

Mescalero Apache Tribe

By: _____ **Date:** 4/19/16

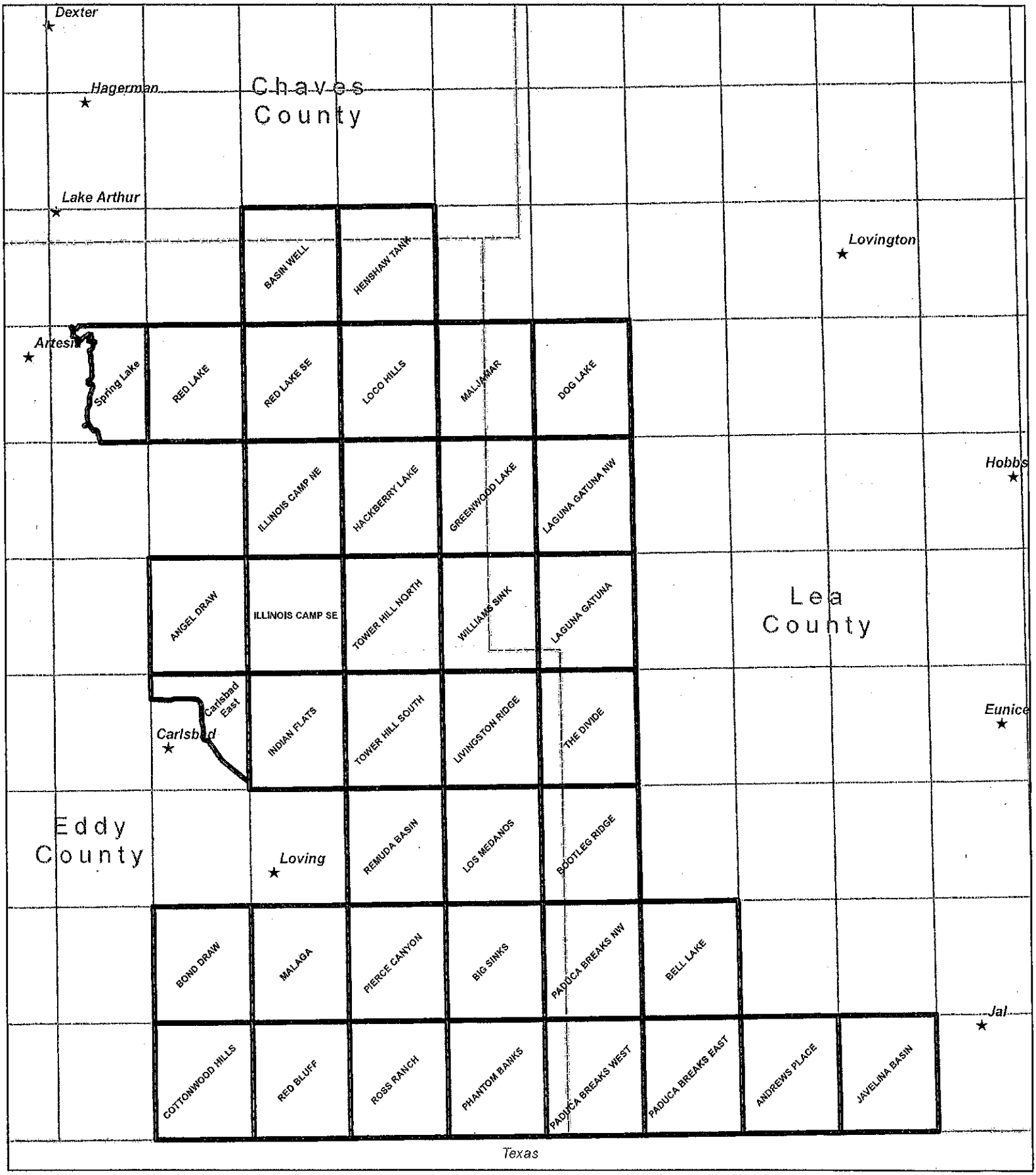
Danny Breuninger, Sr.

Title: **President**

Appendix A

Map of Permian Basin Programmatic Agreement (PA) Project Area

List of Quadrangle Maps



N

Permian Basin Programatic Agreement (PA) Project Area Maps

Legend

- NM Index 24
- NM Major Roads
- ★ NM Cities & Towns
- Bureau of Land Management
- Bureau of Reclamation
- Dept. of Defense
- Dept. of Energy
- Fish & Wildlife Service
- National Park Service
- Private
- State
- State Game & Fish
- State Park

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data, or for purposes not intended by BLM. Spatial information may not meet National Map Accuracy Standards. This information may be updated without notification.

Map created: 4/7/2016

List of 39 Quadrangle Maps
Comprising the Permian Basin Programmatic Agreement (PA) Project Area

Andrews Place
Angel Draw
Basin Well
Bell Lake
Big Sinks
Bond Draw
Bootleg Ridge
Carlsbad East – Portion of map north and east of NM 200, the Carlsbad Relief Route, and CR 605, U.S. Refinery Road
Cottonwood Hills
Dog Lake
Greenwood Lake
Hackberry Lake
Henshaw Tank
Illinois Camp NE
Illinois Camp SE
Indian Flats
Javelina Basin
Laguna Gatuna
Laguna Gatuna NW
Livingston Ridge
Loco Hills
Los Medanos
Malaga
Maljamar
Paduca Breaks East
Paduca Breaks NW
Paduca Breaks West
Phantom Banks
Pierce Canyon
Red Bluff
Red Lake
Red Lake SE
Remuda Basin
Ross Ranch
Spring Lake – Portion of map east of the Pecos River
The Divide
Tower Hill North
Tower Hill South
Williams Sink

Appendix B

Funding Formulas

PERMIAN BASIN PA FUNDING FORMULA

Application for Permit to Drill (APD)

$1,518 = one well pad and a ¼ mile of road
Anything over ¼ mile of road is $0.23/linear foot

(A drill island within the Designated Potash Area or a large pad with multiple wells will be calculated on the basis of $99 per acre)

Booster Stations

$1,518 = one pad and a ¼ mile of road
Anything over ¼ mile of road is $0.23/linear foot

Frac Ponds

$1, 518 = one frac pond and a ¼ mile of road
Anything over ¼ mile of road is $0.23/linear foot

Pipeline Projects

$1,402 for up to 1 mile of pipe
Anything over 1 mile will be $0.26/linear foot

Access Roads

$1,402 for up to 1 mile of access road
Anything over 1 mile will be $0.26/linear foot

Electric Projects

$702 for up to 1 mile of electric line
Anything over 1 mile will be charged $0.10 per linear foot

Seismic Projects

$450/mile (this includes a base rate + costs for site recording, reroutes, and administration)
Projects will be rounded up to the nearest mile

Reclamation and Spill Removal

$99 per acre.

Inflation Adjustment

Unit prices will be changed annually using the Consumer Price Index, as calculated by the U.S. Department of Labor. Inflation adjustments to unit prices will occur January 1 of each year.

Appendix C

Confirmation of Payment Form (NM 8140-9)

Confirmation of Payment

Form NM 8140-9
(March 2008)
United States Department of the Interior
Bureau of Land Management
New Mexico State Office

Permian Basin Cultural Resource Mitigation Fund

The company shown below has agreed to contribute funding to the Permian Basin Cultural Resource Fund in lieu of being required to conduct a Class III survey for cultural resources associated with their project. This form verifies that the company has elected to have the Bureau of Land Management (BLM) follow the procedures specified within the Programmatic Agreement (PA) concerning improved strategies for managing historic properties within the Permian Basin, New Mexico, for the undertaking rather than the Protocol to meet the agency's Section 106 obligations.

Company Name: _____

Address: _____

_____

Project description:

_____

_____

_____

_____

_____

T._____, R._____, Section _____ NMPM, _____ County, New Mexico

Amount of contribution: $_____

Provisions of the PA:

A. No new Class III inventories are required of industry within the project area for those projects where industry elects to contribute to the mitigation fund.

B. The amount of funds contributed was derived from the rate schedule established within Appendix B of the PA. The amount of the funding contribution acknowledged on this form reflects those rates.

C. The BLM will utilize the funding to carry out a program of mitigation at high-priority sites whose study is needed to answer key questions identified within the Regional Research Design.

D. Donating to the fund is voluntary. Industry acknowledges that it is aware it has the right to pay for a Class III survey rather than contributing to the mitigation fund. Industry must avoid or fund data recovery at those sites already recorded that are eligible for nomination to the National Register or whose eligibility is unknown. Any such payments are independent of the mitigation funds established by this PA.

E. Previously recorded archaeological sites determined eligible for nomination to the National Register, or whose eligibility remains undetermined, must be avoided or mitigated.

F. If any skeletal remains that might be human or funerary objects are discovered by any activities, the land-use applicant will cease activities in the area of discovery, protect the remains, and notify the BLM within 24 hours. The BLM will determine the appropriate treatment of the remains in consultation with culturally-affiliated Indian Tribe(s) and lineal descendants. Applicants will be required to pay for treatment of the cultural items, independent and outside of the mitigation fund.

_____ _____

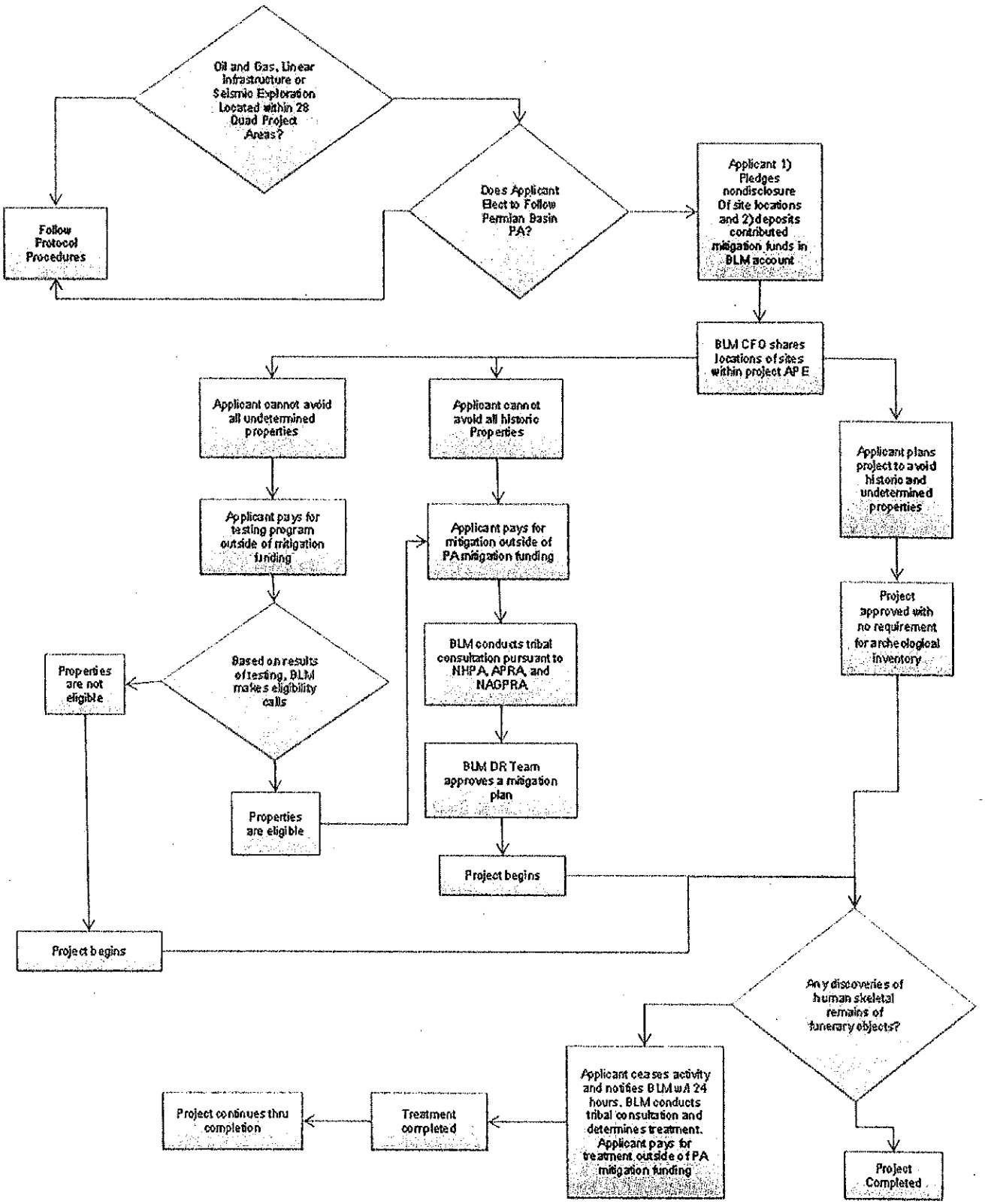
Company-Authorized Officer Date

_____ _____

BLM-Authorized Officer Date

Appendix D

Flowchart for Basic PA Procedures


Oil and Gas, Linear Infrastructure or Seismic Exploration Located within 28 Quad Project Areas?
Follow Protocol Procedures
Does Applicant Elect to Follow Permian Basin PA?
Applicant 1) Pledges nondisclosure Of site locations and 2) deposits contributed mitigation funds in BLM account
BLM CFO shares locations of sites within project APE
Applicant cannot avoid all undetermined properties
Applicant cannot avoid all historic Properties
Applicant plans project to avoid historic and undetermined properties
Applicant pays for testing program outside of mitigation funding
Applicant pays for mitigation outside of PA mitigation funding
Project approved with no requirement for archeological inventory
Based on results of testing, BLM makes eligibility calls
Properties are not eligible
BLM conducts tribal consultation pursuant to NHPA, APRA, and NAGPRA
Properties are eligible
BLM DR Team approves a mitigation plan
Project begins
Project begins
Any discoveries of human skeletal remains of funerary objects?
Applicant ceases activity and notifies BLM w/i 24 hours. BLM conducts tribal consultation and determines treatment. Applicant pays for treatment outside of PA mitigation funding
Treatment completed
Project continues thru completion
Project Completed

Appendix E

Data User Agreement

Bureau of Land Management Carlsbad Field Office
Archaeological Data User Agreement

Name: _____

Institution: _____

Address: _____

Phone / Email: _____

Application Status

- ☐ I have a degree in archaeology, anthropology, history, or a closely-related field or city planning or equivalent training from an accredited educational institution.
- ☐ I am a bona fide representative of an agency, institution, or private entity which holds a Federal or State permit for performing archaeological work within New Mexico.
- ☐ I am an academic researcher affiliated with an accredited educational or research institution.
- ☐ I am a bona fide representative of an agency, institution, or private entity involved with the protection and preservation of cultural resources.
- ☐ I am a representative of industry or local government involved in project planning and/or environmental compliance and require information in my proposed project area.

I request access to cultural property information from the Bureau of Land Management (BLM) Carlsbad Field Office. I understand that information contained in these records is confidential. In consideration of access to this information, I agree to:

1. Supply one (1) copy of any research publication resulting from the use of these records to the BLM-Carlsbad Field Office;
2. Credit the BLM-Carlsbad Field Office in the body of any publication resulting from the use of these records;
3. Supply a list of employees authorized to use this data;
4. Report any changes in address or status to the BLM-Carlsbad Field Office;
5. Use the information only in compliance with applicable Federal and State laws and regulations, including the New Mexico Cultural Properties Act of 1978 [NMSA 1978, §§ 18-6-1 to 18-6-17 (Repl. Pam. 1987 Cum Supp. 1990)], 36-CFR-800, and the Archaeological Resources Protection Act of 1979 [16 U.S.C. §470aa et. seq.].

IN ORDER TO PROTECT CULTURAL RESOURCES, YOU ARE PROHIBITED FROM DISSEMINATING ARCHAEOLOGICAL SITE LOCATION INFORMATION TO OTHERS. UTILIZING THIS INFORMATION TO WILLFULLY LOOT OR DAMAGE AN ARCHAEOLOGICAL SITE IS A VIOLATION OF THE ARCHAEOLOGICAL RESOURCE PROTECTION ACT, AND WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

Authorized Data Users:

Signature: _____ **Date:** _____

Signature: _____ **Date:** _____

Signature: _____ **Date:** _____

Appendix F

Proffer Form

Form 4120-9
(October 1989)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

PROFFER OF MONETARY CONTRIBUTION

State	NM
Office	930
Project Number Assigned	
Project Number Assigned	

INSTRUCTIONS

Submit one copy to each contributor, Field Office grazing case file, and Field Office project file.

1. Name(s)	Address(es) *(include zip code)*

do hereby contribute the sum of $ to the Bureau of Land Management. Contributions are made under the provisions of Section 9 of the Taylor Grazing Act (43 U.S.C. 315h), as amended, and Section 307(c) of the Federal Land Policy and Management Act (43 U.S.C. 1737). Specifically this contribution is for the purpose of *

CARRYING OUT PROVISIONS OF THE PERMIAN BASIN MITIGATION PROGRAM. THIS PROGRAM CODIFIES AN ALTERNATIVE SET OF PROCEDURES BY WHICH THE NEW MEXICO BUREAU OF LAND MANAGEMENT (BLM) WILL MEET ITS SECTION 106 RESPONSIBILITIES UNDER THE NATIONAL HISTORIC PRESERVATION ACT FOR PORTIONS OF SOUTHEAST NEW MEXICO. THIS VOLUNTARY CONTRIBUTION WILL BE UTILIZED BY THE BLM TO CARRY OUT DATA RECOVERY EFFORTS AT HIGH PRIORITY ARCHAEOLOGICAL SITES AND TO CONDUCT RELATED RESEARCH. THE PAYMENTS ARE ACCEPTED IN LIEU OF ADDITIONAL CLASS III ARCHAEOLOGICAL INVENTORY WITHIN A 28-QUAD AREA OF SOUTHEAST NM. NO CONTRIBUTED FUNDS WILL BE USED FOR ADMINISTRATIVE COSTS OR SALARIES OF BLM EMPLOYEES. ALL CONTRIBUTED FUNDS WILL BE USED IN THEIR ENTIRETY FOR CONTRACT COSTS TO CARRY OUT MITIGATION OF THE INDIRECT AND CUMULATIVE EFFECTS OF FULL-FIELD OIL AND GAS DEVELOPMENT WITHIN THE PERMIAN BASIN.

1) The unexpended balance, if any, remaining after completion of the work described in the paragraph above shall be: ☐ Returned to the contributor(s) ☑ Used for general purposes*	II) Contribution, made payable to the Bureau of Land Management, is attached in the form of *(specify check, money order, etc.)* **CHECK**

Signature of Contributor	Title *(as applicable)*	Date
Signature of Contributor	Title *(as applicable)*	Date
Signature of Contributor	Title *(as applicable)*	Date
Signature of Contributor	Title *(as applicable)*	Date
Signature of Contributor	Title *(as applicable)*	Date

Accepted in behalf of the Secretary of the Interior for deposit in the Treasury of the United States and for expenditure for the purpose specified herein

Signature of Authorized Officer	Title	Date

*Contributions for general purposes are accepted to help pay for the expenses of construction or application of conservation and range improvement projects in general, including project planning and design if so specified, or for the payment of expenses incident to the administration, use, protection, and improvement of lands in the district where this contribution is received. Such contributions shall not be used for specific administrative purposes, such as the payment of salaries of named individuals or positions, or the performance of specific functions by such individuals, or the maintenance of offices at particular locations unless approved by the Director. The contribution shall not be used for any purpose at variance with existing Bureau policy, regulation, or law regarding the development, conservation, and use of the public lands.

Appendix G

List of Completed Permian Basin MOA and PA Reports

Railey, Jim A., John Risetto and Matthew Bandy
2009 Synthesis of Excavation Data for the Permian Basin Mitigation Program. SWCA Environmental Consultants. tDAR Identification Number 378484. Data from 116 excavated sites within the Permian Basin MOA area were synthesized.

McCormack, Beth, Douglas H. M. Boggess, Peggy Allison, Theresa Cordua, Brian Deaton, Vicki Menchaca,Tomasz Wasowski, and Andrew Zink
2010 A Class III Cultural Resource Survey of the Permian Basin MOA Area. Chavez and Eddy Counties, New Mexico. Lone Mountain Archaeological Services. tDAR Identification Number 378468. Portions of the Permian Basin PA area that are underrepresented by previous archaeological inventories were inventoried and their archaeological landscape characterized.

Brown, Kenneth L., Martha Graham, Howard Higgins, Timothy G. McEnany, Stephanie Owens, and Mary Quirolo
2010 Ethnographic and Archaeological Inventory with the Mescalero Apache Tribe of Potential Traditional Cultural Properties in the Vicinity of the Permian Basin MOA, BLM Pecos District, Eddy County, New Mexico. TRC Environmental, Inc. This report contains confidential information and is not available for public distribution. TRC inventoried nine locations selected in cooperation with the Mescalero Apache Tribe, Mescalero, New Mexico.

Railey, Jim A.
2010 Archaeological Data Comparability for the Permian Basin Mitigation Program. SWCA Environmental Consultants. Available on request. This project established a set of standards to be utilized by anyone conducting fieldwork in the PA area so that sites, features, and artifacts would be recorded in a consistent manner.

Brown, Kenneth L., editor
2010 The Laguna Plata Site Revisited: Current Testing and Analysis of New and Existing Assemblages. TRC Environmental, Inc. tDAR Identification Number 378476. This project examined artifact and faunal collections from this important site, relocated previous excavations, described the archaeological potential of two landforms in the site's vicinity, provided an interpretation of the site's use in the Archaic and Formative Periods, and evaluated the site's future archaeological research value.

Brown, Marie E., editor
2011 The Boot Hill Site, an Oasis in the Desert, Eddy County, New Mexico. TRC Environmental, Inc. tDAR Identification Number 378477. This National Register listed site was partially excavated by the Lea County Archaeological Society in the late 1950s; only a brief preliminary report of these excavations was published. One goal of the project was to provide a better assessment of the early work at this large and unusual site.

Bandy, Matthew S., Jim A. Railey, Christopher Carlson and Blake Weissling
2011 A Class III Transect Recording Unit Survey and Geophysical Prospection at the Burro Tanks Site (LA 32227), Chaves County, New Mexico. SWCA Environmental Consultants. tDAR Identification Number 378478. This project provided detailed baseline documentation of the present condition of this large, complex site, including protection and research recommendations.

Boggess, Douglas, Betch McCormack, Catherine Spude, and Kimberly Parker
2012 Delaware River Thematic Survey. Lone Mountain Archaeological Services. Available from BLM or New Mexico Archaeological Records Management System (ARMS). This project inventoried prehistoric and historic sites in the Delaware River Valley to be used in preparation of a National Register of Historic Places nomination and for management of the Delaware River Area of Critical Environmental Concern, as defined by the BLM Carlsbad Field Office.

Cummings, Linda Scott and Kováčik, Peter
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