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23 **BEFORE THE ARIZONA CORPORATION COMMISSION**

24 **COMMISSIONERS**

25 Jim O'Connor, Chair  
26 Lea Márquez-Peterson, Commissioner  
27 Anna Tovar, Commissioner  
28 Nick Myers, Commissioner  
Kevin Thompson, Commissioner

29 IN THE MATTER OF THE  
30 APPLICATION OF SUNZIA  
31 TRANSMISSION LLC, IN  
32 CONFORMANCE WITH THE  
33 REQUIREMENTS OF ARIZONA  
34 REVISED STATUTES 40-360, ET SEQ.,  
35 FOR A CERTIFICATE OF  
36 ENVIRONMENTAL COMPATIBILITY  
37 AUTHORIZING THE SUNZIA  
38 SOUTHWEST TRANSMISSION  
39 PROJECT, WHICH INCLUDES THE  
40 CONSTRUCTION OF TWO NEW 500 KV  
41 TRANSMISSION LINES AND  
42 ASSOCIATED FACILITIES  
43 ORIGINATING AT A NEW  
44 SUBSTATIONS (SUNZIA EAST) IN

RECEIVED

FEB 05 2024

ARIZONA CORP COMMISSION  
400 W. CONGRESS - STE 218  
TUCSON, AZ 85701

DOCKET NO. L00000YY-15-0318-  
00171

**FORMAL COMPLAINT  
RE VIOLATIONS OF  
CERTIFICATE OF  
ENVIRONMENTAL  
COMPATIBILITY NO. 171 BY  
SUNZIA**

1 LINCOLN COUNTY NEW MEXICO,  
2 AND TERMINATING AT THE PINAL  
3 CENTRAL SUBSTATION IN  
4 PINAL COUNTY, ARIZONA. THE  
5 ARIZONA PORTION OF THE PROJECT  
6 IS LOCATED WITHIN GRAHAM,  
7 GREENLEE, COCHISE, PINAL, AND  
8 PIMA COUNTIES.

6 Pursuant Arizona Administrative Code (“A.A.C.”) R14-3-106(L), complainants  
7 Center for Biological Diversity, San Carlos Apache Tribe, Tohono O’odham Nation,  
8 Archaeology Southwest, and Peter Else hereby file this formal complaint with the Arizona  
9 Corporation Commission (“Commission”) against SunZia Transmission LLC (“SunZia”)  
10 and Pattern Energy (“Pattern Energy”), and allege as follows:

### 11 **INTRODUCTION**

12 1. SunZia, the holder of Certificate of Environmental Compatibility No. 171  
13 (“CEC”), has unlawfully begun construction of its transmission lines. The CEC obliges  
14 SunZia to submit two substantive documents to the Commission *prior to commencement*  
15 *of construction*: a cultural landscape study and a historic properties treatment plan. SunZia  
16 has submitted an incomplete historic properties treatment plan and has not conducted a  
17 cultural landscape study. The Commission is requested to (1) enforce the CEC by ordering  
18 SunZia to cease construction until the conditions of the CEC are complied with, and (2)  
19 advise SunZia that failing to do so will result in suspension of the CEC until SunZia  
20 complies with the CEC’s conditions.

### 21 **PARTIES**

22 2. Complainant CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a  
23 non-profit membership corporation with offices in Arizona, California, Colorado, Florida,  
24 Hawaii, Minnesota, Nevada, North Carolina, Oregon, Washington, Washington D.C., and  
25 Mexico. The Center works through science, law, and policy to secure a future for all  
26 species, great or small, hovering on the brink of extinction. The Center is actively  
27 involved in species and habitat protection issues worldwide, including throughout the  
28 southwestern United States, and actively advocates for increased protections for species

1 and their habitats and landscape connectivity in Arizona and specifically in the San Pedro  
2 Valley. The Center works to support preservation of indigenous cultural landscapes and  
3 traditional cultural properties as well as other historic properties to benefit human welfare  
4 which is deeply linked to nature, wildlife, and habitat.

5 3. Complainant SAN CARLOS APACHE TRIBE (“the Tribe”) is a federally-  
6 recognized Indian tribe, organized pursuant to Section 16 of the Indian Reorganization  
7 Act of 1934 (48 Stat. 984), with a governing body recognized by the Secretary of the  
8 Interior. The San Carlos Apache Reservation (“Reservation”) is situated in three counties  
9 in eastern Arizona— Gila, Pinal, and Graham. The Reservation is a much smaller portion  
10 of the larger aboriginal and ancestral homelands of the Tribe and Western Apache. The  
11 Tribe has a strong religious, historic, and cultural connection to the lands and waters in the  
12 San Pedro Valley where the Project is to be located and operated. Indeed, long before  
13 Anglo-Europeans appeared in the western hemisphere, the Tribe’s and its members’  
14 ancestors lived on the land in the San Pedro Valley. The Project, its associated facilities,  
15 and connected activities will occur within culturally sensitive and sacred areas of  
16 significance and importance to the Tribe and the Tribe’s members.

17 4. Complainant TOHONO O’ODHAM NATION (“the Nation”) is a federally-  
18 recognized Indian tribe with a governing body recognized by the Secretary of the Interior.  
19 In addition to the Tohono O’odham Nation’s reservation lands, the Nation maintains deep  
20 historical, cultural, and spiritual connections to its broader ancestral territories including  
21 the San Pedro Valley. Many tribal members trace their lineage to the Sobaipuri O’odham,  
22 whose numerous villages along the San Pedro River were documented by the first Spanish  
23 conquistadors upon their arrival to the area in the early 1500s. Additionally, the Nation’s  
24 tribal members are descendants of the Hohokam, the ancient people who previously lived  
25 and flourished along the rivers of Southern Arizona including the San Pedro River. The  
26 San Pedro Valley is a Traditional Cultural Landscape of the Tohono O’odham Nation and  
27 the many tribes whom they have shared this valley with for millennia.

28

1           5.       Complainant ARCHAEOLOGY SOUTHWEST is a 501(c)(3) nonprofit  
2 organization headquartered in Tucson, Arizona. Founded in 1989, Archaeology Southwest  
3 has over 2,000 members around the country. For over three decades, Archaeology Southwest  
4 has practiced a holistic, conservation-based approach to exploring the places of the past—a  
5 concept it calls “Preservation Archaeology.” By exploring what makes a place unique and  
6 sharing this knowledge in innovative ways, Archaeology Southwest seeks to foster  
7 meaningful connections to the past and respectfully safeguard its irreplaceable resources. A  
8 key element of the Preservation Archaeology mission, therefore, is to connect the places and  
9 stories of the past to the people and values of the present. Archaeology Southwest achieves its  
10 mission by supporting low-impact research, educating the public about the invaluable  
11 archaeological resources within its study areas, and protecting fragile and invaluable places  
12 through fee simple ownership and conservation easements so that these places may be shared  
13 by future generations of Americans. Relevant here, Archaeology Southwest has sponsored  
14 and coordinated over a decade of intensive cultural resource inventories, archaeological and  
15 ethnographic research, and Tribal and public engagement centered on the San Pedro Valley.

16           6.       Complainant PETER ELSE was an intervenor in the above docket. Mr. Else  
17 is a landowner in the San Pedro River Valley watershed and a conservation activist in the  
18 region as member and chairperson of the Lower San Pedro Watershed Alliance.

19           7.       Respondent SUNZIA TRANSMISSION LLC is the holder of CEC 171, as  
20 amended (see below).

21           8.       Respondent PATTERN ENERGY GROUP LP (“Pattern Energy”) acquired  
22 “100% interest in SunZia” on July 18, 2022. *See* SunZia’s “CEC Application to Amend –  
23 Supplemental Project Information” filed under the above docket no. on August 1, 2022  
24 (“Supplemental Information”), p. 1, ¶ 3; and *see* Commission Order No. 78769 dated  
25 November 21, 2022, p. 10, fn 24. Pattern Energy is “a privately-owned developer and  
26 operator of wind, solar, transmission, and energy storage projects.” *See* Supplemental  
27 Information, p. 2, § 3. Pattern Energy claims “Pattern Energy is responsible for the current  
28 CEC which authorizes both lines.” *See* Supplemental Information, p. 1, ¶ 3. Any orders



1 issued by the Commission herein as requested below are requested to be issued against  
2 both SunZia and Pattern Energy.

3 9. The Commission has jurisdiction over Respondents. *See* Commission  
4 Decision No. 78769, p. 31, ¶ 1.

### 5 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

#### 6 **1. Brief history of CEC 171**

7 10. On or about September 2, 2015, SunZia (as a “utility” subject to the  
8 provisions of A.R.S. § 40-360 *et seq.*) filed with the Commission an application for a  
9 Certificate of Environmental Compatibility for the SunZia Southwest Transmission  
10 Project, which would authorize a 550-mile transmission corridor connecting Central New  
11 Mexico to South Central Arizona, consisting of two 500 kV transmission lines, two  
12 substations, and a potential Direct Current (DC) converter station (“Project”).

13 11. On February 22, 2016, the Commission approved CEC 171 issued by the  
14 Arizona Power Plant and Transmission Line Siting Committee (“LS Committee”). *See*  
15 Commission Decision No. 75464 dated February 22, 2016.

16 12. On May 13, 2022, SunZia submitted an application to the Commission  
17 requesting an amendment to CEC 171, including to bifurcate CEC 171 into “two CECs to  
18 provide for separate ownership of each line. *See* Commission Decision No. 78769 dated  
19 November 21, 2022, p. 2, ¶ 3.

20 13. On September 13, 2022, the LS Committee recommended approval of the  
21 application by issuing Recommended Opinions and Orders (“ROO”) CEC 171-A and  
22 CEC 171-B.

23 14. On November 21, 2022, the Commission approved ROO CEC 171-A and  
24 CEC 171-B. *See* Commission Decision No. 78769 dated November 21, 2022, p. 31, ¶ 123.

25 15. CEC 171-A governs “Line 1,” which will “operate as a DC facility.” *See*  
26 Commission Decision No. 78769 dated November 21, 2022, p. 5, ¶ 26.

27 16. CEC 171-B governs “Line 2,” which will “operate as an AC facility.” *See*  
28 Commission Decision No. 78769 dated November 21, 2022, p. 5, ¶ 26.

1           17.    CEC 171-A and CEC 171-B retain the original conditions included in the  
2 2016 CEC, and are referred to herein as “CEC.” The CEC is attached hereto as **Exhibit A**.

3           **2. CEC 171’s Violated Conditions**

4           18.    Condition 27 of the CEC provides that a “Class III cultural resource survey  
5 and *cultural landscape study* shall be conducted to fully evaluate the impacts of the  
6 Project on the cultural landscape *prior to the commencement of construction*, pursuant to  
7 and as required by the PA [Programmatic Agreement].” See **Exhibit A**, p. 14 (emphasis  
8 added).

9           19.    The CEC makes it clear that such a study is necessary “to fully evaluate the  
10 impacts of the Project on the cultural landscape” through which SunZia’s 550-miles of  
11 transmission lines will be passing. See **Exhibit A** (CEC), p. 14 (Condition 27).

12           20.    At the time the CEC was drafted, SunZia expressly agreed to conduct a  
13 cultural landscape study (in addition to the Class III cultural resource survey) before  
14 commencing construction. The language “and cultural landscape study” was included in  
15 Condition 27 of the CEC as part of a settlement between SunZia and intervenors, which  
16 the Commission’s LS Committee accepted. See excerpts of transcripts from LS  
17 Committee hearing dated November 19, 2015, p. 26289, attached hereto as **Exhibit B** (all  
18 highlights on this and all exhibits herein are added by counsel for ease of reference).

19           21.    Condition 12 of the CEC provides that “*Before construction of the Project*  
20 *may commence*, the Applicant shall file a copy of each of the following documents with  
21 the Commission's Docket Control: (a) PA [Programmatic Agreement], (b) *HPTP* [Historic  
22 Properties Treatment Plan], ..., including any amendments to any of such documents  
23 subsequent to the granting of this Certificate. **Exhibit A**, p. 9 (emphasis added).

24           22.    Condition 12 of the CEC also provides that “*Further*, in addition to  
25 compliance with the conditions set forth in this Certificate, the *Applicant shall comply*  
26 *with the provisions of these documents* as applicable to the Arizona portion of the  
27 Project.” **Exhibit A**, p. 9 (emphasis added).

28

1           23.     Condition 11 of the CEC provides that ‘Applicant will comply with the  
2 HPTP to be developed pursuant to the Programmatic Agreement (“PA”) entered into on  
3 December 17, 2014, to ensure that *pre-construction* archaeological testing and monitoring  
4 of all ground clearing and disturbing construction activities that may affect historical or  
5 cultural sites that are listed, or eligible for listing, on the Arizona Register of Historic  
6 Places (“Register”) *are conducted in full compliance with Arizona and federal law.*’  
7 (Emphasis added.) **Exhibit A**, p. 9.

8           **3. The NHPA and its implementing regulations**

9           24.     The Project is subject to the National Historic Preservation Act (“NHPA”)  
10 and its implementing regulations.

11           25.     Section 106 of the NHPA requires that federal agencies “take into account  
12 the effect” of any “undertaking” on historic properties. 54 U.S.C. § 306108.

13           26.     “Historic property” is defined as “any prehistoric or historic district, site,  
14 building, structure, or object included on, or eligible for inclusion on, the National  
15 Register, including artifacts, records, and material remains relating to the district, site,  
16 building, structure, or object.” 54 U.S.C. § 300308.

17           27.     The NHPA’s regulations provide that a memorandum of agreement  
18 “evidences the agency[’s] compliance with section 106 and [its implementing regulations]  
19 and shall govern the undertaking.” 36 C.F.R. § 800.6.

20           28.     The regulations guide federal agencies in implementing the § 106  
21 consultation process, which requires the agency to identify the affected historical  
22 properties, determine potential adverse effects, and identify methods of mitigation. 36  
23 C.F.R. §§ 800.2–800.7.

24           29.     The regulations also require consultation with the public, the Advisory  
25 Council on Historic Preservation (“ACHP”), the State Historic Preservation Officer  
26 (“SHPO”), and Indian tribes that “attach religious and cultural significance to historic  
27 properties that may be affected by an undertaking.” *Id.*, § 800.2(c)(2)(ii).

28

1           30. For “complex project situations” (like the Project) a memorandum of  
2 agreement may take the form of a “programmatic agreement.” 36 C.F.R. § 800.14.

3           **4. SunZia’s obligations under the Programmatic Agreement**

4           31. Here, a Programmatic Agreement (“PA”) for the Project was executed in  
5 December 2014; non-substantive amendments were made in 2022 to reflect the later  
6 Project Right-of-Way (ROW) modifications.

7           32. On December 4, 2014, SunZia signed the PA, and on November 21, 2022,  
8 SunZia signed the amended PA.

9           33. SunZia’s obligations under the PA are expressly incorporated into the CEC.  
10 See **Exhibit A** (CEC), p. 9 (Condition 12).

11           34. A violation of the PA by SunZia is a violation of the CEC. See **Exhibit A**  
12 (CEC), p. 9 (Condition 12).

13           35. Pursuant to Stipulations I(H), II(A)(3), II(C), III(A) of the PA, SunZia was  
14 obliged to prepare “an HPTP ... that will address the effects of the proposed Undertaking  
15 on *historic properties* during the Undertaking, including *traditional cultural properties*  
16 (TCPs) as discussed in National Register Bulletin No. 38.” PA, Stipulation III(A)  
17 (emphasis added), excerpt of which is attached hereto as **Exhibit C**.

18           36. National Register Bulletin No. 38 (with which SunZia’s HPTP is obliged to  
19 comply) is a “Guideline for Evaluating and Documenting Traditional Cultural Properties”  
20 published by the National Park Service in 1998 (Bulletin No. 38”). See  
21 <https://www.nps.gov/subjects/nationalregister/upload/NRB38-Compleweb.pdf>, excerpts  
22 of which are attached as **Exhibit D**.

23           37. Bulletin No. 38 defines a “traditional cultural property” as “one that is  
24 eligible for inclusion in the National Register because of its association with cultural  
25 practices or beliefs of a living community that (a) are rooted in that community’s history,  
26 and (b) are important in maintaining the continuing cultural identity of the community.”  
27 *Id.* at p. 1.

1 38. Bulletin No. 38 affirms that a “culturally significant natural landscape may  
2 be classified as a site.” *Id.* at p. 9.

3 39. Pursuant to the PA, “The HPTP shall address potential direct, indirect and  
4 cumulative effects from construction and reclamation as well as from operation and  
5 maintenance of the proposed transmission lines and associate facilities.” See **Exhibit C**  
6 (PA, Stipulation III(A)) (emphasis added).

7 40. Pursuant to the PA, the HPTP must “identify the nature of the effects to  
8 historic properties and describe the strategies proposed to avoid, minimize, or mitigate  
9 those effects.” PA, Stipulation III(A)(1).

10 41. Pursuant to the PA, the HPTP must “identify cultural resources that will be  
11 affected by the Undertaking ... and will specify the strategy for determining eligibility.”  
12 PA, Stipulation III(A)(2).

13 42. “Cultural resources” include “landscapes.” See **Exhibit C** (PA, p. A1-24)  
14 (emphasis added).

15 43. Pursuant to the PA, the HPTP must “at a minimum” “specify and include”  
16 sixteen listed items including “the historic properties to be affected by the Undertaking  
17 and the nature of those effects.” PA, Stipulation III(A)(4)(a).

18 44. Pursuant to the PA, SunZia cannot begin construction until all applicable  
19 laws and regulations have been complied with. See **Exhibit C** (PA, Stipulation V.B)  
20 (“Upon the BLM’s acceptance of the final HPTP ..., the BLM, at its discretion, and  
21 pending compliance with all other applicable laws and regulations, may authorize the  
22 Applicant to begin construction on lands under any ownership or jurisdiction ...”).

### 23 **5. SunZia has undertaken no cultural landscape study**

24 45. Condition 27 of the CEC obliges SunZia to conduct a Class III cultural  
25 resource survey as well as a “cultural landscape study” “prior to the commencement of  
26 construction.” See **Exhibit A** (CEC), p. 14 (Condition 27).

27 46. SunZia has not conducted a cultural landscape study. See **Exhibit O** below  
28 (SunZia’s Letter of Self-Certification dated January 31, 2024).

1           47.     Without such a study, SunZia is unable (nor is anyone else) “to fully  
2 evaluate the impacts of the Project on the cultural landscape” through which SunZia’s  
3 550-miles of transmission lines will be passing. *See Exhibit A* (CEC), p. 14 (Condition  
4 27).

5           48.     Condition 27 of the CEC provides no exceptions to SunZia’s obligation to  
6 conduct a cultural landscape study prior to the commencement of construction.

7           49.     Moreover, the PA obliges SunZia to address, in its HPTP, “the effects of the  
8 proposed Undertaking on historic properties during the Undertaking, including *traditional*  
9 *cultural properties* (TCPs) as discussed in National Register Bulletin No. 38.” *See*  
10 **Exhibit C** (PA, Stipulation III(A)) (emphasis added).

11           50.     Bulletin No. 38 explains that traditional cultural properties or sites include  
12 “culturally significant natural landscapes.” Bulletin No. 38 at p. 9. Thus, the PA obligates  
13 SunZia to address whether San Pedro River Valley is a culturally significant natural  
14 landscape.

15           51.     SunZia failed to undertake a study to identify TCPs in the San Pedro River  
16 Valley.

17           52.     SunZia failed to undertake a study to identify whether the San Pedro River  
18 Valley is a “culturally significant natural landscape.”

19           53.     SunZia’s failure to undertake a cultural landscape study thus also violates  
20 the PA.

21           54.     SunZia expressly promised the communities impacted by the Project that it  
22 would conduct a “cultural landscape study” prior to commencement of construction. This  
23 condition was added into Condition 27 of the CEC through negotiation between the  
24 parties, with the express agreement by SunZia, during the LS Committee hearings in  
25 2015. *See Exhibit B*.

26           55.     SunZia knew exactly what it was promising when it agreed to undertake a  
27 cultural landscape study. The National Park Service’s Bulletin No. 38, which governs  
28 traditional cultural properties and cultural landscapes, was expressly incorporated into the

1 PA. *See Exhibit C* (PA, Stipulation III(A)). The National Park Service is very clear on  
2 what a cultural landscape report entails. *See*  
3 <https://www.nps.gov/subjects/culturallandscapes/preservation.htm>.

4 **6. The treatment plan submitted by SunZia to the Commission is incomplete**

5 56. On December 5, 2023, SunZia filed with the Commission a Notice of Filing  
6 Regarding Historic Properties Treatment Plan “in accordance with Paragraph 12 of the”  
7 CEC, advising that it ‘has provided Commission Staff with a copy of the Arizona Historic  
8 Properties Treatment Plan (the “HPTP”) for the SunZia DC transmission line associated  
9 with the Project.’ *See* Notice dated December 5, 2023, p. 1:20-21.

10 57. The “SunZia DC transmission line” refers to the line authorized in CEC  
11 171-A.

12 58. SunZia did indeed submit a form of treatment plan to Commission staff  
13 dated August 2023, which was entitled “A Historic Properties Treatment Plan for the  
14 SunZia Southwest Transmission Line Project Phase One Line in Arizona” (“Partial  
15 Plan”). (This document, now in the possession of Commission staff, contains sensitive  
16 information regarding cultural resources, and thus cannot be disclosed publicly. It is  
17 therefore not attached as an exhibit hereto).

18 59. The Partial Plan, on its face, acknowledges that it is a *partial treatment*  
19 *plan*: it memorializes that “*a separate treatment plan is being prepared to address*  
20 *additional adverse effects including visual, indirect, and other effects, such as those to*  
21 *tribally sensitive properties, as well as cumulative effects.*” (Emphasis added.) *See* Partial  
22 Plan, p. 1.

23 60. The Partial Plan acknowledges that “such properties *will be affected by the*  
24 *construction of the SunZia project, and the second treatment plan will be devoted to*  
25 *resolving these other types of effects to these properties.*” (Emphasis added.) *Id.*

26 61. The Partial Plan acknowledges that “*the middle San Pedro Valley ... will be*  
27 *considered in the second treatment plan for other effects.*” (Emphasis added.) *Id.*  
28



1           62.     The Partial Plan thus did not address the assessment, mitigation, and  
2 resolution of adverse effects to the San Pedro Valley.

3           63.     The Partial Plan, on its face, acknowledges that it does not address “adverse  
4 effects including visual, indirect, and other effects, such as those to tribally sensitive  
5 properties,” that it does not address “cumulative effects,” and that it does not address  
6 effects on “the middle San Pedro Valley.” *Id.*

7           64.     The Partial Plan attempts to justify its failure to comply with the PA by  
8 claiming that “This second plan will allow for a more-focused consideration of the  
9 mitigation of direct visual and tribal effects.” *Id.*

10          65.     In the Partial Plan, SunZia and BLM acknowledged that BLM is “still  
11 subject to additional tribal and Consulting Party consultations at certain sites (e.g., TCPs  
12 and trails).” (Emphasis added.) *Id.*

13          66.     In response to the Partial Plan, in a letter dated August 3, 2023, the Arizona  
14 State Historic Preservation Officer (“SHPO”), a position established by the NHPA,  
15 criticized SunZia’s Partial Plan, stating that “The SHPO strongly believes that the HPTPs  
16 prepared in conjunction with Section 106 of the National Historic Preservation Act  
17 compliance should address adverse effects to all classes of historic properties adversely  
18 affected by an undertaking.” *See* SHPO letter to BLM dated August 3, 2023, attached  
19 hereto marked **Exhibit E**, p. 1.

20          67.     The SHPO also advised BLM that “We are greatly concerned by the lack of  
21 consideration of tribal values in the proposed research. We recommend that the BLM  
22 offer consulting tribes the opportunity to collaborate on the research to ensure that  
23 mitigation addresses effects to all character-defining features of identified Register-  
24 eligible historic properties, including their associative values.” *Id.*, p. 1.

25          68.     The SHPO also reminded BLM that “As the BLM is aware, consulting  
26 parties to the SunZia programmatic agreement have identified the San Pedro Valley as a  
27 cultural landscape.” *Id.*, p. 1.

28

1           69.     On August 3, 2023, Pima County sent a letter to BLM, advising BLM that  
2 the Partial Plan was “*deficient in its present form*,” pointing out (among many listed  
3 deficiencies) that “most notably is the omission of any identification of Traditional  
4 Cultural Places of spiritual and/or cultural importance to Native Nations.” *See* letter to  
5 BLM dated August 3, 2023, attached hereto as **Exhibit F**.

6           70.     On August 4, 2023, complainants the Tribe, the Nation and Archaeology  
7 Southwest sent a Notice of Dispute to BLM because the Partial Plan violated the NHPA  
8 and the PA. *See* Notice of Dispute to BLM dated August 4, 2023, attached hereto as  
9 **Exhibit G**.

10           71.     On August 28, 2023, in response to the SHPO’s letter, *BLM acknowledged*  
11 that the Partial Plan *was not a final HPTP*: “the adverse effects to other classes of historic  
12 properties that will be affected by the SunZia Project (including Traditional Cultural  
13 Properties and cultural landscapes) *will be presented in a separate HPTP that is under*  
14 *development at this time*,” and that “Since the BLM is *still in the process of developing*  
15 *this HPTP*, which will address the recently identified middle San Pedro Valley, we will be  
16 consulting with the Tohono O’odham Nation and the San Carlos Apache Tribe, as well as  
17 other Consulting Parties to better define and understand the property. ... A consultation  
18 meeting in accordance with PA stipulation III.B.1.b, *will be held* soon as possible to  
19 *continue the development of this HPTP*.” *See* letter dated August 28, 2023, from BLM to  
20 the SHPO, attached hereto as **Exhibit H**, p. 1.

21           72.     BLM acknowledged that a “final HPTP” was still forthcoming: ‘In  
22 accordance with PA stipulation III.B.2, this revised HPTP is being distributed to all  
23 Consulting Parties for a 21-calendar-day review. Then, “BLM, in consultation with the  
24 SHPO, *shall approve the final HPTP*.’ *Id.*, p. 2.

25           73.     In an email dated August 29, 2023, BLM wrote “Please keep in mind that  
26 this HPTP concerns the direct physical effects that will be resolved through the use of  
27 archaeological methods. A second HPTP is in development that will address sites and  
28 effects that are visual, indirect, cumulative or concern landscapes, TCPs and tribal values.

1 This developing HPTP will cover the middle San Pedro Valley TCP/cultural landscape.”  
2 See email dated August 29, 2023, attached hereto as **Exhibit I**.

3 74. BLM indisputably conceded that the Partial Plan does *not* address “sites and  
4 effects that are visual, indirect, cumulative or concern landscapes,” or “TCPs and tribal  
5 values.”

6 75. On September 26, 2023, on the basis *inter alia* of the Partial Plan submitted  
7 by SunZia, BLM issued a Limited Notice to Proceed with Construction (“LNTP”) to  
8 SunZia to begin construction in the San Pedro River Valley, Arizona, segment of the  
9 Project.

10 76. Even with the issuance of BLM’s LNTP, SunZia may not begin construction  
11 on land subject to the Commission’s jurisdiction until SunZia has complied with the pre-  
12 construction conditions in the CEC.

13 77. On September 27, 2023, BLM wrote to complainant Archaeology  
14 Southwest, again reiterating that no final HPTP was in place: “the Historic Properties  
15 Treatment Plan to resolve non-physical adverse effects to historic properties, such as  
16 effects that are visual, indirect, or to tribal values, is under development.” See email dated  
17 September 27, 2023, attached as **Exhibit J**. BLM advised that “Consultation on this plan  
18 would be an excellent opportunity to inform us further about the middle San Pedro Valley  
19 Traditional Cultural Property and provide input for measures to resolve adverse effects.”  
20 *Id.*

21 78. On September 29, 2023, BLM wrote to all “Consulting Parties” that an  
22 HPTP “for direct, physical effects” *only* had been finalized. See email dated September  
23 29, 2023, attached as **Exhibit K**.

24 79. On October 6, 2023, the Advisory Council on Historic Preservation  
25 (“ACHP”), the agency that wrote the NHPA’s implementing regulations, criticized  
26 SunZia’s so-called “final” treatment plan (the Partial Plan), advising BLM that, in order to  
27 “avoid confusion or inconsistency with the PA,” the approach of developing multiple  
28 HPTPs (i.e., an HPTP to address direct/physical adverse effects and a second HPTP to

1 address indirect and “other” effects to traditional cultural properties) requires either an  
2 amendment to the PA, or “if it is the BLM’s plan to combine these iterative reports into a  
3 single HPTP for each state,” then BLM “cannot authorize construction until all parts of  
4 this report (considering all aspect’s [sic] of the undertaking’s effects on historic  
5 properties) have been finalized and approved.” See email dated October 6, 2023, attached  
6 as **Exhibit L.**

7 80. The ACHP thus expressly advised BLM not to authorize construction until a  
8 complete HPTP has been finalized because to do so is inconsistent with the PA.

9 81. In an email dated October 6, 2023, complainants the Tribe, the Nation and  
10 Archaeology Southwest made the same complaint to BLM, namely, that the PA does not  
11 contemplate “a second HPTP:” “Your email references an in-development “Historic  
12 Properties Treatment Plan to resolve non-physical adverse effects to historic properties,  
13 such as effects that are visual, indirect, or to tribal values.” We find no mention of a second  
14 HPTP in the PA. Indeed, PA part III. A. states (emphasis added) “BLM shall ensure that  
15 the Applicant prepares *an* HPTP for each state that will address the effects of the proposed  
16 Undertaking on historic properties during the Undertaking, including traditional cultural  
17 properties (TCPs).” ... We find no BLM reference to or consultation with PA consulting  
18 parties regarding this proposed second HPTP.’ See email dated October 6, 2023, attached  
19 as **Exhibit M.**

20 82. Complainants pointed out to BLM that ‘In further reference to the second  
21 HPTP to resolve “non-physical adverse effects to historic properties, such as effects that  
22 are visual, indirect, or to tribal values,” we note that neither the National Historic  
23 Preservation Act (“NHPA”), nor its implementing regulations (36 CFR 800), nor the PA  
24 itself provide any basis for partitioning adverse effects to historic properties in terms of  
25 physical and non-physical.” *Id.*

26 83. Complainants pointed out to BLM that “there cannot be a final HPTP until  
27 the regulatory steps prescribed at 800.4-5 and associated consultations are completed and  
28 the resulting information and perspective either employed to avoid adverse effects or

1 integrated into the single HPTP required by the PA. For this reason, and because historic  
2 properties cannot be altered without a final HPTP, please include in your email response  
3 the affirmation that BLM will refrain from providing any notice to proceed or other  
4 similar authorization to the SunZia applicant/proponent for Arizona lands.” *Id.*

5 84. BLM ignored the ACHP’s advice and the complainants’ concerns.

6 85. In spite of, and with full knowledge of, the ACHP’s advice that the Partial  
7 Plan does not comply with the PA, and in spite of all the notifications from tribes and  
8 concerned citizens that the Partial Plan was incomplete and premature, SunZia filed the  
9 Partial Plan with the Commission on December 5, 2023, ostensibly in an attempt to  
10 comply with Condition 12 of the CEC.

11 86. SunZia did not advise the Commission that the Partial Plan was partial, or  
12 that a second HPTP was in progress, or that the ACHP had advised BLM that the Partial  
13 Plan was incomplete, or that there was any dispute at all over the Partial Plan.

14 87. On December 8, 2023, the Chairmen of both the Tribe and the Nation, (“on  
15 behalf of the more than 50,000 combined members” of the Tribe and the Nation), advised  
16 the Commission in writing that SunZia’s filing in relation to the HPTP was “out of order.”  
17 *See* letter dated December 8, 2023, attached as **Exhibit N**, p. 1.

18 88. The Tribe and the Nation, “joined by the Zuni Tribe, Hopi Tribe, and  
19 Southwest Archaeology,” put the Commission on notice: “Please be advised that the  
20 HPTP filed with the Commission per CEC Condition 12 on December 5 stands premature  
21 and inconsistent with the terms of the PA and NHPA.” *Id.*, p. 2.

22 89. The Tribe and the Nation requested that “the Commission instruct the  
23 Applicant to cease construction until evidence of full compliance is provided.” *Id.*, p. 2.

24 90. The Tribe and the Nation also put the Commission on notice that SunZia has  
25 failed to comply with Condition 27 of the CEC: “The information available to us indicates  
26 that that no such cultural landscape study has been initiated. ... BLM refused to complete  
27 the cultural landscape study required in CEC Condition 27.” *Id.*, p. 2.

28

1           91.     On January 17, 2024, the Tribe, the Nation, Archaeology Southwest, and the  
2 Center filed a separate lawsuit in the District Court of Arizona, Tucson Division, against  
3 BLM, under case no. CV-00034-JGZ, because BLM’s acceptance of SunZia’s Partial  
4 Plan, and consequent issuance of the LNTP, was a violation of the PA and of BLM’s  
5 consultation obligations under the NHPA and its governing regulations, including but not  
6 limited to 36 CFR § 800.4(1) to (4).

7           **7. SunZia’s Letter of Self-Certification implicitly acknowledges that it has not**  
8 **complied with the CEC**

9           92.     On January 31, 2024, SunZia filed a Letter of Self-Certification with the  
10 Utilities Division of the Commission. Under Condition 12, SunZia reported that an HPTP  
11 “for Line 1” only was finalized during 2023 and provided to the Commission. *See* excerpt  
12 of Letter of Self-Certification,” attached as **Exhibit O** (“Condition No. 12”).

13           93.     SunZia thus concedes that the Partial Plan is incomplete.

14           94.     In its Letter of Self-Certification, under Condition No. 27, SunZia reported  
15 it had completed a Class III cultural resources survey, but acknowledged that it has not  
16 undertaken a “landscape scale cultural resources study.” *Id.* (“Condition No. 27).

17           95.     SunZia thus concedes that it has not undertaken a cultural landscape study.

18           96.     SunZia purports to justify its failure to undertake a cultural landscape study  
19 by stating that BLM “received inadequate information to justify” a cultural landscape  
20 study. *Id.* (Condition 27).

21           97.     SunZia’s justification is irrelevant because Condition 27 provides no  
22 exceptions to the obligation to undertake a cultural landscape study.

23           98.     SunZia’s justification is also disingenuous because SunZia is fully aware of  
24 its promise to the communities impacted by the Project to conduct a “cultural landscape  
25 study” prior to commencement of construction. This condition was added into Condition  
26 27 of the CEC through negotiation between the parties, with the express agreement by  
27 SunZia, during the LS Committee hearings in 2015. *See* **Exhibit B**.

1        **8. SunZia has begun construction**

2            99.     SunZia has begun construction on the San Pedro Valley segment of the  
3 Project. *See* aerial picture of new access roads and tower pad sites west of San Pedro  
4 River, near Redrock Canyon. Photo taken by Archaeology Southwest on November 13,  
5 2023, approximate coordinates 32.17471, -110.34917.



17  
18            100.    The land upon which SunZia has commenced construction is subject to the  
19 CEC.

20        **9. Violation of the CEC is causing and will cause harm to complainants**

21            101.    Clearing, grading, road construction, and other ground-disturbing activities  
22 that are inherent to the Project are causing and will continue to cause adverse effects to  
23 historic properties including destruction of landscape integrity and connectivity that is  
24 harming, degrading, and adversely affecting important cultural values of this traditional  
25 cultural landscape.

26            102.    These activities are also causing the loss and displacement from the  
27 landscape of the native flora and fauna including many plants and animals sacred to the  
28 Tribes including tagging and relocation of saguaro cacti and agave.





1           **2. SunZia has violated Condition 12 of the CEC**

2           110. Condition 12 of the CEC obliges SunZia to submit an HPTP to the  
3 Commission before beginning construction.

4           111. Condition 12 of the CEC obliges SunZia to comply with the conditions of  
5 the PA.

6           112. The PA obliges SunZia to include an identification of traditional cultural  
7 properties (“TCPs”) in the HPTP. PA, Stipulation III(A).

8           113. The Partial Plan failed to identify any TCPs (instead, the document claimed  
9 it would do so later).

10          114. The PA obliges SunZia to define and depict areas of potential effects in the  
11 HPTP. PA, Stipulation III(A).

12          115. The Partial Plan failed to define and depict areas of potential effects.

13          116. The PA obliges SunZia to address all adverse effects including visual,  
14 indirect, and other effects, including those to tribally sensitive properties, as well as  
15 cumulative effects in the HPTP. PA, Stipulation III(A)

16          117. The Partial Plan failed to address adverse effects including visual, indirect,  
17 and other effects, including those to tribally sensitive properties, as well as cumulative  
18 effects.

19          118. The PA obliges SunZia to address cumulative effects in the HPTP. PA,  
20 Stipulation III(A).

21          119. The Partial Plan failed to address cumulative effects.

22          120. The PA does not incorporate or allow for bifurcation of treatment plans  
23 prior to commencement of construction.

24          121. The PA contemplates a single HPTP addressing all adverse effects to  
25 historic properties prior to the commencement of construction.

26          122. Commencement of construction prior to submitting a complete HPTP to the  
27 Commission violates Condition 12 of the CEC.

28

1 123. Commencement of construction prior to submitting a complete HPTP also  
2 violates the PA.

3 124. Violation of the PA violates the CEC.

4 125. SunZia has violated Condition 12 of the CEC by commencing construction  
5 prior to submission to the Commission of an HPTP that complies with the PA.

6 **WHEREFORE**, Complainants request that the Commission make the following orders:

- 7 1) That SunZia has failed to comply with Condition 27 of the CEC.
- 8 2) That SunZia has failed to comply with Condition 12 of the CEC.
- 9 3) That SunZia may not begin construction of the Project, or must cease  
10 construction, until Conditions 12 and 27 of the CEC have been satisfied.
- 11 4) That, if SunZia fails to cease construction forthwith, then the CEC is  
12 suspended until such time as SunZia complies with Conditions 12 and 27.
- 13 5) Any other order that the Commission deems fair and appropriate.

14 DATED this 5<sup>th</sup> day of February, 2024.

15  
16 /s/ Adriane J. Hofmeyr  
17 Adriane J. Hofmeyr  
18 HOFMEYR LAW, PLLC  
*Attorney for the Center, Archaeology Southwest, Mr. Else*

19 /s/ Howard Shanker  
20 Howard Shanker, Attorney General  
*Attorney for the Tohono O'Odham Nation*

21 /s/ Alexander Ritchie  
22 Alexander Ritchie, Attorney General  
*Attorney for the San Carlos Apache Tribe*

23  
24 Original and 13 copies of the foregoing  
25 Filed on the 5<sup>th</sup> day of February 2024, with:

26 Docket Control  
27 Arizona Corporation Commission  
28 400 W. Congress Street, #218  
Tucson, Arizona 85701

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28

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FEB 05 2024

ARIZONA CONN. COMMISSION  
400 W. CONGRESS - STE 218  
TUCSON, AZ 85701

# EXHIBIT A



0000166993

ORIGINAL

1 BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING  
2 COMMITTEE

2015 NOV 24 A 8:41

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKET NO. L-00000YY-15031800171

Case No. 171

**CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY**  
Arizona Corporation Commission  
**DOCKETED**

NOV 24 2015

DOCKETED BY

3 IN THE MATTER OF THE APPLICATION )  
4 OF SUNZIA TRANSMISSION LLC, IN )  
5 CONFORMANCE WITH THE )  
6 REQUIREMENTS OF ARIZONA REVISED )  
7 STATUTES 40-360, ET SEQ., FOR A )  
8 CERTIFICATE OF ENVIRONMENTAL )  
9 COMPATIBILITY AUTHORIZING THE )  
10 SUNZIA SOUTHWEST TRANSMISSION )  
11 PROJECT, WHICH INCLUDES THE )  
12 CONSTRUCTION OF TWO NEW 500 KV )  
13 TRANSMISSION LINES AND )  
14 ASSOCIATED FACILITIES ORIGINATING )  
15 AT A NEW SUBSTATION (SUNZIA EAST) )  
16 IN LINCOLN COUNTY, NEW MEXICO, )  
17 AND TERMINATING AT THE PINAL )  
18 CENTRAL SUBSTATION IN PINAL )  
19 COUNTY, ARIZONA. THE ARIZONA )  
20 PORTION OF THE PROJECT IS LOCATED )  
21 WITHIN GRAHAM, GREENLEE, )  
22 COCHISE, PINAL, AND PIMA COUNTIES. )

14 **CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY**

15 **A. Introduction**

16 Pursuant to notice given as provided by law, the Arizona Power Plant and  
17 Transmission Line Siting Committee ("Committee") held public hearings on October 19-  
18 21, 2015, in Willcox, Arizona; on October 22-23 and November 2-3, 2015, in Tucson,  
19 Arizona; on November 4-5, 2015, in Casa Grande, Arizona; and on November 16-19,  
20 2015, in Florence, Arizona in conformance with the requirements of Arizona Revised  
21 Statutes ("A.R.S.") §§ 40-360 *et seq.* for the purpose of receiving evidence and deliberating  
22 on the September 2, 2015, Application of SunZia Transmission, LLC ("Applicant") for a  
23 Certificate of Environmental Compatibility ("Certificate") in the above-captioned case  
24 ("Project"). In conjunction with the foregoing, route tours were conducted from Willcox on  
25 October 21, 2015, and from Tucson on November 3, 2015.

26 The following members and designees of members of the Committee were present  
27 at one or more of the hearings for the evidentiary presentations and/or the deliberations:

28 ///

1	Thomas K. Chenal	Chairman, Designee for Arizona Attorney General, Mark Brnovich
2		
3	Steve Olea	Designee of the Chairman, Arizona Corporation Commission
4	Ian Bingham	Designee for Director, Arizona Department of Environmental Quality
5		
6	Lisa Williams	Designee for Director, Arizona Department of Water Resources
7	Jack Haenichen	Appointed Member
8	David L. Eberhart	Appointed Member
9	Mary Hamway	Appointed Member
10	Jeff McGuire	Appointed Member
11	Patricia Noland	Appointed Member
12	Jim Palmer	Appointed Member

13           The Applicant was represented by Albert H. Acken and Samuel Lee Lofland, Ryley  
14 Carlock & Applewhite, and Lawrence V. Robertson, Jr., Of Counsel to Munger Chadwick,  
15 P.L.C. The following parties were granted intervention pursuant to A.R.S. § 40-360.05:  
16 Arizona Corporation Commission Staff, by Charles Hains, Staff Counsel; Pinal County, by  
17 Cedric Hay, Deputy County Attorney; Redington NRCD and Winkelman NRCD, by Lat J.  
18 Celmins; Robson Ranch Mountains, LLC, by Jay L. Shapiro; Norm "Mick" Meader, *in*  
19 *propria persona*; Peter T. Else, *in propria persona*; and, Christina McVie, *in propria*  
20 *persona*.

21           At the conclusion of the hearings, the Committee, after considering the: (1)  
22 Application; (2) evidence, testimony, and exhibits presented by the Applicant and  
23 intervenors; and (3) comments of the public, and being advised of the legal requirements of  
24 A.R.S. §§ 40-360 through 40-360.13, upon motion duly made and seconded, voted 8 to 0  
25 with one abstention and one absent in favor of granting the Applicant this Certificate for  
26 construction of the Project.

27 ///

28



1 **B. Overview Project Description**

2 The Project includes the construction and operation of two (2) new 500 kilovolt  
3 (kV) interstate transmission lines and associated Project facilities originating at a new  
4 substation (SunZia East) in Lincoln County, New Mexico and terminating at the Pinal  
5 Central Substation in Pinal County, Arizona. This Certificate approves construction of the  
6 Project within the State of Arizona. The Project as approved herein consists of two (2) new,  
7 single-circuit 500 kV transmission lines and associated facilities, including a new 500kV  
8 substation ("500 kV Willow Substation") and a direct current (DC) converter station. All  
9 Project components are located within Greenlee, Graham, Cochise, Pima and Pinal  
10 counties and the City of Coolidge. A general location map of the Project is depicted in  
11 Exhibit A to the Application.

12 A 200-foot wide right-of-way is approved for each transmission line within the  
13 corridor depicted on the CEC Corridor Map (Attachment A, Panels a through g). The  
14 general width of the certificated corridor is 2,500 feet, with the exception of the following  
15 segments: (1) a corridor width of 750 feet along the segment located in Cochise County  
16 from a point approximately four (4) miles east, to a point one (1) mile west of Ft. Grant  
17 Road, where the specified corridor crosses private lands (Attachment A, Panel b); (2) an  
18 irregularly-shaped corridor of varying width of 2,500 feet to 8,100 feet along the corridor  
19 segment located in Cochise County in the vicinity of Paige Canyon, from a point 7.5 miles  
20 northwest of the San Pedro River route crossing, and continuing for a distance of  
21 approximately 6.6 miles crossing Arizona State Trust lands, along the Proposed Route  
22 shown on the general location map depicted in Exhibit A to the Application (Attachment  
23 A, Panel c, Link C201); and (3) a width of 1,200 feet along the corridor segment located in  
24 Pinal County north of Earley Road, from a point 0.8 miles west of the Central Arizona  
25 Project Canal to a point approximately 0.5 mile east of SR 87 where the specified corridor  
26 crosses private lands (Attachment A, Panel g).

27 There will typically be a 50-foot separation between the two (2) rights-of-way.  
28 However, in some locations, the separation may be up to 1,000 feet to avoid or traverse

1 adjacent terrain features or heavy equipment limitations, and to preserve critical habitat,  
2 existing land uses and important cultural resources. At least one (1) of the two (2) 500 kV  
3 transmission lines will be constructed and operated as an alternating current (AC) facility;  
4 the other transmission line will be either an AC or DC facility. As contemplated and  
5 provided for in this Certificate, the two (2) transmission lines may be constructed at  
6 different points in time.

7 In addition, the Project includes construction of the new Willow-500 kV Substation  
8 on lands managed by the Arizona State Land Department (ASLD) in Graham County,  
9 Arizona. The location of the Willow-500 kV Substation is approximately three (3) miles  
10 north of the Cochise County line and approximately 1.1 miles east of US Highway 191 as  
11 depicted in Exhibit A to the Application. The Project terminates at the existing Pinal  
12 Central Substation, which was approved by the Arizona Corporation Commission  
13 ("Commission") in 2005 (Siting Case No. 126; Decision No. 68093) and thereafter  
14 constructed by Salt River Project. The Pinal Central Substation is located approximately  
15 7.5 miles east of Interstate 10 on privately owned land within the City of Coolidge,  
16 Arizona. These two (2) substations will provide Arizona utilities and load centers with  
17 access to renewable energy transmitted on the Project's two (2) transmission lines.

18 Finally, a DC converter station will be required if the 500 kV DC transmission line  
19 option is utilized in order to convert the flow of electricity from DC to AC and thereby  
20 allow the DC line to deliver energy to the Pinal Central Substation. The converter station  
21 herein approved would be constructed within a fenced parcel of up to forty-five (45) acres,  
22 located within the 2,500 foot wide corridor, no more than one (1) mile east of the Pinal  
23 Central Substation, as depicted in Exhibit G to the Application, Figure G-3-3. The  
24 interconnection between the Pinal Central Substation and the DC converter station would  
25 require two (2) 500 kV AC transmission lines, which also would be constructed within the  
26 2,500-foot wide corridor. Typical Project design features and details, including structure  
27 diagrams anticipated for the Project, are provided in Exhibit G to the Application.

28 ///

1 **C. Approved Project Route Description**

2 The route herein approved ("Route") is a total of approximately two hundred (200)  
3 miles in length within Arizona, and will be parallel to approximately one hundred  
4 seventeen (117) miles of existing or designated utility corridors. The Route crosses the  
5 New Mexico-Arizona state line from Hidalgo County, New Mexico into Greenlee County,  
6 Arizona, approximately three (3) miles north of the Cochise County line. The Route then  
7 proceeds east to west for approximately thirty-seven (37) miles from the state line into  
8 Graham County south of the Hot Well Dunes Recreation Area, and continues through the  
9 San Simon Valley to the Willow-500 kV Substation, located approximately three (3) miles  
10 north of the Cochise County line and one (1) mile east of US Highway 191 in Graham  
11 County, Arizona.

12 The Route then proceeds southwest from the Willow-500 kV Substation, parallel to  
13 two (2) 345 kV transmission lines operated by Tucson Electric Power Company ("TEP")  
14 for approximately forty-seven (47) miles, and crosses two (2) pipelines and US Route 191.  
15 The Route then crosses the TEP 345 kV lines approximately one (1) mile west of the San  
16 Pedro River and turns northwest and continues through the northeast corner of Pima  
17 County into Pinal County, of which approximately twelve (12) miles will be parallel to an  
18 existing pipeline corridor. The Route then turns and heads west approximately two (2)  
19 miles west of San Manuel. The route crosses SR 77 approximately five (5) miles northwest  
20 of the community of Oracle, and continues west for thirteen (13) miles, where it crosses  
21 and then continues southwesterly and parallel to Arizona Public Service Company's  
22 Cholla-Saguaro 500 kV transmission line for five (5) miles. From that point, the route  
23 crosses SR 79 near the Oracle Junction Substation, then continues to the west and parallel  
24 to the Cholla-Saguaro 500 kV line for approximately thirteen (13) miles. The Route then  
25 proceeds northwest, then north and parallel to TEP's Pinal Central-Tortolita 500 kV  
26 transmission line for approximately sixteen (16) miles (Siting Case No. 165; Decision No.  
27 73282). The Route then turns northwest, then west, continuing to parallel the Pinal Central-  
28 Tortolita 500 kV line and a pipeline corridor for approximately six (6) miles. As the Route

1 then heads west, it crosses the Central Arizona Project canal and SR 87 before it proceeds  
2 to the Pinal Central Substation, located on the southeast corner of SR 287 and Eleven Mile  
3 Corner Road, paralleling the Pinal Central-Tortolita 500 kV line for an additional twelve  
4 (12) miles. If one (1) of the lines is constructed as a DC facility, then the Project will  
5 include construction of a new DC converter station, which will be located within the 2,500-  
6 foot wide corridor at a location no more than one (1) mile east of the Pinal Central  
7 Substation.

### 8 CONDITIONS

9 This Certificate is granted upon the following conditions:

- 10 1. The Applicant shall comply with all existing applicable statutes, ordinances,  
11 master plans, and regulations of any governmental entity having jurisdiction during the  
12 construction and operation of the Project, including the United States of America, the State  
13 of Arizona, the counties of Greenlee, Graham, Cochise, Pima, and Pinal, and the City of  
14 Coolidge.
- 15 2. Applicant shall comply with the notice and salvage requirements of the Arizona  
16 Native Plant Law (A.R.S. §§ 3-901, *et seq.*) and shall, to the extent feasible, minimize the  
17 destruction of native plants during Project construction.
- 18 3. Applicant shall comply with the Arizona Game and Fish Department (“AGFD”)  
19 guidelines for handling protected animal species, should any be encountered during  
20 construction.
- 21 4. The Applicant shall design the transmission lines to incorporate reasonable  
22 measures to minimize impacts to raptors, cranes, and waterfowl. Such design will be  
23 accomplished through the Applicant’s compliance with its Avian Protection Plan (“APP”),  
24 or an equivalent plan, which will be developed pursuant to the Record of Decision  
25 (“ROD”) issued by the United States Bureau of Land Management (“BLM”) on January  
26 23, 2015. Once completed, the APP or equivalent plan will become part of, and be  
27 incorporated into, this Certificate. In addition, the APP or equivalent plan shall, at a  
28 minimum, include the 2006 standards of the Avian Power Line Interaction Committee.

1 The APP or equivalent plan shall address the application of recommended measures to  
2 minimize the risk of collision, as described in the 2012 guidelines of the Avian Power Line  
3 Interaction Committee.

4 5. The ROD issued by BLM requires the Applicant to prepare a Plan of  
5 Development ("POD") outlining and detailing the relevant construction, mitigation, and  
6 restoration requirements for the Project prior to commencing construction on any portion  
7 thereof. Where practicable, as determined by the landowner, the POD shall specify that the  
8 Applicant: (a) use existing roads for construction and access; (b) revegetate, unless  
9 revegetation is waived by the landowner, native areas following construction disturbance;  
10 (c) specify the Applicant's plan for construction access and methods to minimize impacts  
11 to wildlife and to minimize vegetation disturbance outside of the Project right-of-way,  
12 particularly in drainage channels and along stream banks; and (d) specify the manner in  
13 which the Applicant makes use of existing roads.

14 6. The POD shall specify the Applicant's plans for coordination with AGFD and the  
15 State Historic Preservation Office ("SHPO"). The Applicant shall use existing roads for  
16 construction and access where practicable, consistent with the requirements of the ROD, on  
17 any lands traversed within the Arizona portion of the Project.

18 7. The Applicant shall work with a representative designated by the Redington  
19 Natural Resources Conservation District and the Winkelman Natural Resources  
20 Conservation District (collectively, the "NRCs") to develop and implement the Project  
21 POD provisions regarding the fields of land, soil, water, and natural resources management  
22 within the boundaries of the NRCs during construction and maintenance activities within  
23 the NRCs' respective area boundaries. Areas of concern to the NRCs are minimizing  
24 soil disturbance requiring, where possible and technically feasible, overland access and/or  
25 aerial construction; utilization of existing roads for construction and maintenance activities,  
26 where possible; determination of best management practices for revegetation following  
27 conclusion of construction activities within the NRCs; determination of best management  
28 practices for erosion control during construction and maintenance activities; and dust



1 abatement and other similar areas where the NRCs' designated representatives have  
2 special knowledge of the-fields of land, soil, water, and natural resources management  
3 within the boundaries of each NRCD relevant to the development of the POD. Where the  
4 Project is located within the NRCs' district boundaries, but also on ASLD trust lands, all  
5 proposed POD provisions developed pursuant to this Condition will be subject to the  
6 consent and approval of the ASLD. Where the Project is located within the NRCs'  
7 boundaries but also on BLM-administered lands, all proposed POD provisions developed  
8 pursuant to this condition will be subject to the consent and approval of the BLM.

9         8. The Applicant shall make every reasonable effort to promptly identify and  
10 correct, on a case-specific basis, all complaints of interference with radio or television  
11 signals from operation of the transmission line(s) addressed in this Certificate. The  
12 Applicant shall maintain written records for a period of five (5) years of all complaints of  
13 radio or television interference attributable to operations, together with the corrective  
14 action taken in response to each complaint. All complaints shall be recorded to include  
15 notations on the corrective action taken. Complaints not leading to a specific action or for  
16 which there was no resolution shall be noted and explained. Upon request, the written  
17 records shall be provided to the Staff of the Commission. Pursuant to the ROD, the  
18 Applicant will respond to complaints of line-generated radio or television interference by  
19 promptly investigating the complaints and implementing appropriate mitigation measures.  
20 In addition, the transmission line(s) will be evaluated on a regular basis so that damaged  
21 insulators or other line materials that could cause interference are timely repaired or  
22 replaced.

23         9. If any archaeological site, paleontological site, historical site, or an object that is  
24 at least fifty (50) years old is discovered on state, county, or municipal land during the  
25 construction of the Project, the Applicant or its representative in charge shall promptly  
26 report the discovery to the Director of the Arizona State Museum ("ASM"), and in  
27 consultation with the Director, shall immediately take all reasonable steps to secure and  
28 maintain the preservation of the discovery, pursuant to A.R.S. § 41-844. Such steps will

1 likely be accomplished through compliance with the Historic Properties Treatment Plan  
2 (“HPTP”) for archaeological and historical sites and the Paleontological Resources  
3 Monitoring Plan (“PRMP”) for paleontological sites, both of which will be developed  
4 pursuant to the ROD. Once completed, the HPTP and the PRMP will become part of, and  
5 be incorporated into, this Certificate.

6 10. If human remains and/or funerary objects are encountered on private land during  
7 the course of any ground-disturbing activities related to the construction of the Project,  
8 Applicant shall cease work on the affected area of the Project and notify the Director of the  
9 ASM as required by A.R.S. § 41-865.

10 11. Applicant will comply with the HPTP to be developed pursuant to the  
11 Programmatic Agreement (“PA”) entered into on December 17, 2014, to ensure that pre-  
12 construction archaeological testing and monitoring of all ground clearing and disturbing  
13 construction activities that may affect historical or cultural sites that are listed, or eligible  
14 for listing, on the Arizona Register of Historic Places (“Register”) are conducted in full  
15 compliance with Arizona and federal law. In the event a listed or listing-eligible site is  
16 discovered, the Applicant will ensure that approved mitigation measures are implemented  
17 according to the PA. Applicant shall coordinate and share results of any archaeological  
18 work and findings with the appropriate tribes, according to the PA.

19 12. Before construction of the Project may commence, the Applicant shall file a  
20 copy of each of the following documents with the Commission’s Docket Control: (a) PA;  
21 (b) HPTP; (c) PRMP; (d) POD; (e) ROD; and (f) APP, or equivalent, including any  
22 amendments to any of such documents subsequent to the granting of this Certificate.  
23 Further, in addition to compliance with the conditions set forth in this Certificate, the  
24 Applicant shall comply with the provisions of these documents as applicable to the Arizona  
25 portion of the Project. Notification of such filing with Docket Control shall be made to the  
26 counties of Greenlee, Graham, Cochise, Pima, and Pinal, City of Coolidge, SHPO, AGFD,  
27 all parties to this Docket, and all parties that made a limited appearance in this Docket.

28 ///



1           13. Within one hundred twenty (120) days of the Commission's decision approving  
2 this Certificate, the Applicant will post signs in or near public rights-of-way giving notice  
3 of the Project corridor to the extent authorized by law. The Applicant shall place such signs  
4 in prominent locations at reasonable intervals (no more than one-half mile apart, subject to  
5 obtaining permission from the landowner) so that the public is notified along the full length  
6 of the Project until the transmission structures are constructed. To the extent practicable,  
7 within forty-five (45) days of securing easements or rights-of-way for the Project, subject  
8 to the landowner's approval, the Applicant shall erect and maintain signs (no more than  
9 one-half mile apart) providing public notice that the property is the site of a future  
10 transmission line or substation. Such signage shall be no smaller than a normal roadway  
11 sign. The signs shall advise:

- 12           (a) That the site has been approved for the construction of Project facilities;  
13           (b) The expected date of completion of the Project facilities;  
14           (c) A phone number for public information regarding the Project;  
15           (d) The name of the Project;  
16           (e) The name of the Applicant; and  
17           (f) The website of the Project.

18 Such signs shall be inspected at least once annually and if necessary be repaired or  
19 replaced.

20           14. Within one hundred twenty (120) days of the Commission's decision granting  
21 this Certificate, the Applicant shall make good faith efforts to commence discussions with  
22 private landowners on whose property the Project corridor is located to identify the specific  
23 location for the Project's right-of-way and placement of poles. A description of the good  
24 faith efforts and discussions shall be included in the annual compliance-certification letter.

25           15. The Applicant will pursue reasonable efforts to work with private landowners on  
26 whose property the Project right-of-way will be located to mitigate the impacts of the  
27 location, construction, and operation of the Project on private land. A description of these  
28 reasonable efforts shall be included in the annual compliance-certification letter.

1           16. At least ninety (90) days, but not more than three hundred sixty-five (365) days  
2 before construction commences on the Project, the Applicant shall provide cities and towns  
3 within five (5) miles of the Project and known homebuilders and developers who are  
4 building upon or developing land within one (1) mile of the centerline of the Project with a  
5 written description, including height and width measurements of all structure types, of the  
6 Project. The written description shall identify the location of the Project and contain a  
7 pictorial depiction of the Project. The Applicant shall also encourage these developers and  
8 homebuilders to include this information in their disclosure statements.

9           17. The Applicant shall use non-specular conductor and non-reflective surfaces for  
10 the Project's transmission line structures.

11           18. The Applicant will follow the most current Western Electricity Coordinating  
12 Council/North American Electric Reliability Corporation planning standards, as approved  
13 by the Federal Energy Regulatory Commission, and National Electrical Safety Code  
14 construction standards. At the San Pedro River crossing, towers and conductors shall be of  
15 sufficient height to minimize tree removal as contemplated in the Biological Opinion.

16           19. With respect to the Project, the Applicant shall participate in good faith in state  
17 and regional transmission study forums to coordinate transmission expansion plans related  
18 to the Project and to resolve transmission constraints in a timely manner.

19           20. When Project facilities are located parallel to and within one hundred (100) feet  
20 of any existing natural gas or hazardous pipeline, the Applicant shall:

- 21           a) Ensure grounding and cathodic protection measurements are performed to  
22 show that the Project's location parallel to and within one hundred (100) feet of  
23 such pipeline results in no material adverse impacts to the pipeline or to public  
24 safety when both the pipeline and the Project are in operation. The Applicant shall  
25 take appropriate steps to ensure that any material adverse impacts are mitigated. The  
26 Applicant shall provide to the Commission Staff and file with Docket Control a  
27 copy of the measurements performed and additional mitigation, if any, that was  
28 implemented as part of its annual compliance-certification letter; and

1           b)     Ensure that measurements are taken during an outage simulation of the  
2           Project that may be caused by the collocation of the Project parallel to and within  
3           one hundred (100) feet of the existing natural gas or hazardous liquid pipeline. The  
4           measurements should either: (i) show that such simulated outage does not result in  
5           customer outages; or (ii) include operating plans to minimize any resulting customer  
6           outages. The Applicant shall provide a copy of the measurement results to the  
7           Commission Staff and file it with Docket Control as part of its annual compliance-  
8           certification letter.

9           21. The Applicant shall submit a compliance-certification letter each January,  
10          identifying progress made with respect to each condition contained in this Certificate,  
11          including which conditions have been met. Each letter shall be submitted to the  
12          Commission's Docket Control commencing January 2017. Attached to each compliance-  
13          certification letter shall be documentation explaining how compliance with each condition  
14          was achieved. Copies of each letter, along with the corresponding documentation, shall be  
15          submitted to the Arizona Attorney General. The requirement for the compliance  
16          certification letter shall expire on the date the Project is placed into operation. Notification  
17          of such filing with Docket Control shall be made to the counties of Greenlee, Graham,  
18          Cochise, Pima, and Pinal, City of Coolidge, SHPO, AGFD, all parties to this Docket, and  
19          all parties that made a limited appearance in this Docket.

20          22. The Applicant shall provide copies of this Certificate to the counties of  
21          Greenlee, Graham, Cochise, Pima and Pinal, the City of Coolidge, SHPO, and AGFD.

22          23. This authorization to construct the Project shall expire at two (2) different points  
23          in time, unless extended by the Commission, as provided below:

24           a) The Certificate for the first 500 kV transmission line and related facilities and the  
25           500 kV-Willow Substation shall expire ten (10) years from the date this Certificate  
26           is approved by the Commission, with or without modification; and

27          ///

28

1           b) The Certificate for the second 500 kV transmission line and related facilities shall  
2           expire fifteen (15) years from the date this Certificate is approved by the  
3           Commission, with or without modification.

4           However, prior to the expiration of either time period, the Applicant may request that the  
5           Commission extend either or both time limitation(s).

6           24. In the event that the Project requires an extension of either or both term(s) of this  
7           Certificate prior to completion of construction, the Applicant shall file such a time  
8           extension request at least one hundred eighty (180) days prior to the expiration date of the  
9           Certificate. The Applicant shall use reasonable means to promptly notify all cities and  
10          towns within five (5) miles of the Project and all landowners and residents within one (1)  
11          mile of the centerline of the Project, all persons who made public comment at this  
12          proceeding who provided a mailing or email address, and all parties to this proceeding of  
13          the request and the date, time, and place of the hearing or open meeting during which the  
14          Commission will consider the request for extension. Notification shall be no more than  
15          three (3) business days after the Applicant is made aware of the hearing date or the open  
16          meeting date.

17          25. Any transfer or assignment of this Certificate shall require the assignee or  
18          successor to assume in writing all responsibilities of the Applicant listed in this Certificate  
19          and its conditions as required by A.R.S. § 40-360.08(A) and R14-3-213(F) of the Arizona  
20          Administrative Code.

21          26. The POD will identify and require the necessary steps to avoid the creation of  
22          new roads, including the employment of aerial construction for the setting of transmission  
23          structures and conductors within the San Pedro River Valley in the eight-mile area that  
24          includes Paige Canyon, as depicted in Attachment B hereto, subject to the approval of the  
25          landowner, ASLD. In so doing, the Applicant will work with ASLD in determining how,  
26          when, and where the use of helicopters can assist in mitigating the impact of construction  
27          activities, setting transmission structures and conductors, including tower placement,  
28          stringing, tensioning, and operation and maintenance of any transmission line(s) on

1 biological and cultural resources in the remainder of the San Pedro River Valley in which  
2 the Project will be built. All of the above shall take into account, where relevant, the  
3 potential air wash effect of and/or tribal sensitivity to the use of helicopters near cultural  
4 sites. Nothing in the foregoing precludes the Applicant from considering or utilizing aerial  
5 construction along other portions of the Route.

6 27. A Class III cultural resource survey and cultural landscape study shall be  
7 conducted to fully evaluate the impacts of the Project on the cultural landscape prior to the  
8 commencement of construction, pursuant to and as required by the PA.

9 28. The Route will be micro-sited to minimize paralleling Paige Canyon through  
10 coordination with and subject to approval by ASLD. To accommodate this effort, the  
11 corridor maps submitted herewith reflect a wider corridor to allow the Applicant maximum  
12 micro-siting capabilities.

13 29. Upon commencement by the Applicant of activities related to the initiation of  
14 the POD, the Applicant will invite, in writing, the following persons to coordinate with the  
15 Applicant on the development of the Arizona portion of the POD prior to submission to the  
16 BLM (hereinafter referred to as the "invited stakeholders"):

- 17 • All parties who intervened in the SunZia Certificate Process.
  - 18 ○ The *Pro Se* interveners may either respond and participate in their individual  
19 capacity, or in a representative capacity on behalf of an organization which  
20 they represent.
- 21 • All agencies which were Arizona Cooperating Agencies during the NEPA Process  
22 for the Project.
- 23 • All counties through which the Project traverses.
- 24 • The Nature Conservancy.
- 25 • All cities and towns within five (5) miles of the centerline of the Project.

26 Any person invited by the Applicant to coordinate in the development of the  
27 Arizona portion of the POD who wishes to participate in such coordination must respond to  
28 the Applicant, in writing, accepting the invitation, within thirty (30) days from the date the  
Applicant mailed the invitation. For ease of reference, any person accepting the invitation  
will be hereinafter referred to as "participating stakeholder." Any person invited by the  
Applicant to coordinate in the development of Arizona portion of the POD who does not



1 respond to the Applicant, in writing, accepting the invitation within thirty (30) days from  
2 the date the Applicant mailed the invitation shall have no further right or ability to  
3 coordinate with the Applicant in the development of Arizona portion of the POD.

4       The Applicant will coordinate with the participating stakeholders by, at least,  
5 engaging in the following steps prior to submitting the Arizona portion of the POD to the  
6 BLM for review:

- 7
- 8       1. The Applicant will coordinate and participate in a workshop with the participating  
9       stakeholders.
- 10       2. Thereafter, the Applicant will provide the participating stakeholders with a  
11       preliminary draft of the Arizona portion of the POD for review and comment.
- 12       3. Participating stakeholders may, but for consideration must, within thirty (30) days of  
13       receipt, provide the Applicant with written comments, suggestions, and  
14       recommendations on the Arizona portion of the POD. The Applicant is under no  
15       obligation to review or in any way consider any comments, suggestions, or  
16       recommendations on the Arizona portion of the POD if said comments are received  
17       by the Applicant more than thirty (30) days after the Arizona portion of the POD is  
18       provided to the participating stakeholders for review.
- 19       4. The Applicant will, to the extent practicable and feasible, as determined in the  
20       Applicant's sole judgment, incorporate any comments, suggestions, and revisions by  
21       the participating stakeholders into the Arizona portion of the POD, which are timely  
22       submitted as outlined herein, prior to submittal of the POD to the BLM.

23 The aforementioned coordination will include, but will not necessarily be limited to, the  
24 identification of and coordination on the development of the portions of the POD that  
25 discuss monitoring and adaptive management with respect to: cultural and historic  
26 resources; a vegetative and invasive species management plan; raptor, crane, and other  
27 avian mitigation measures; erosion management techniques; application of Standard and  
28 Selective Mitigation Measures; vegetative replacement and restoration techniques; and  
residual impacts for the life of the permit.

30. In the event the Applicant, its assignee, or successor, seeks to modify the  
Certificate terms at the Commission, it shall provide copies of such request to the counties  
of Greenlee, Graham, Cochise, Pima, and Pinal, the City of Coolidge, SHPO, AGFD, all  
parties to this Docket, and all parties that made a limited appearance to this Docket.

1           31. Applicant will, in good faith, and consistent with the requirements of state and  
2 federal law, use its best efforts to secure transmission service contracts for renewable  
3 energy generation.

4           32. Applicant shall add the monopole Y-Tower to the family of towers that may be  
5 used on the Project.

6           33. Within sixty (60) days of filing a transmission service agreement with FERC,  
7 the Applicant shall file a copy of the same with this Docket.

8           34. Prior to construction of any Project transmission facilities, Applicant shall  
9 provide the Commission Staff with copies of any Agreement(s) it enters into with the entity  
10 or entities it selects to own and operate the 500 kV transmission facilities. Such  
11 Agreement(s) shall be filed with the Commission Staff within thirty (30) days of execution  
12 of such Agreement(s), with the summary thereof filed at Docket Control.

13           35. Prior to construction of any Project transmission facilities, Applicant shall  
14 provide the Commission Staff with copies of the transmission interconnection agreement(s)  
15 it ultimately enters into with any transmission provider(s) with whom it is interconnecting  
16 within thirty (30) days of execution of such agreement(s), with the summary thereof filed at  
17 Docket Control.

18           36. Applicant shall be responsible for arranging that all field personnel involved in  
19 the Project receive training as to proper ingress, egress, and on-site working protocol for  
20 environmentally sensitive areas and activities. Contractors employing such field personnel  
21 shall maintain records documenting that the personnel have received such training.

22           37. In the event Pima County loses the ability to claim credit pursuant to their  
23 proposed Multi Species Conservation Plan , available online at  
24 [http://www.fws.gov/southwest/es/arizona/Documents/HCPs/SonoranDesert/  
25 PimaMSCP\\_Public\\_Draft.pdf](http://www.fws.gov/southwest/es/arizona/Documents/HCPs/SonoranDesert/PimaMSCP_Public_Draft.pdf) (last visited November 20, 2015), with respect to currently  
26 existing lands it leases from the ASLD because of the SunZia Project, the Applicant will  
27 either work with Pima County to secure replacement lands or provide compensatory  
28 mitigation to offset such loss.

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Certificate incorporates the following Findings of Fact and Conclusions of Law:

1. The Project may aid the state and the southwest region in meeting the need for an adequate, economical, and reliable supply of electric power.

2. The Project may aid the state in preserving a safe and reliable electric transmission system.

3. The Project may assist the state in meeting the goal of increasing the use of renewable energy in the state.

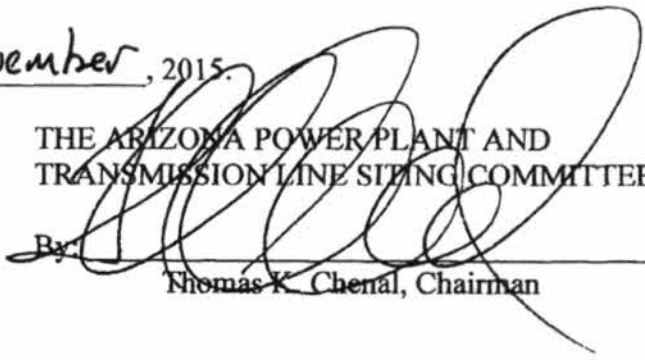
4. The Project and the conditions placed on the Project in this Certificate effectively minimize the Project's impact on the environment and ecology of the state.

5. The conditions placed on the Project in this Certificate resolve matters concerning balancing the need for the Project with its impact on the environment and ecology of the state arising during the course of the proceedings, and, as such, serve as findings and conclusions on such matters.

6. The Project is in the public interest because the Project's potential contribution to meeting the need for an adequate, economical, and reliable supply of electric power outweighs the minimized impact of the Project on the environment and ecology of the state.

DATED this 24<sup>th</sup> day of November, 2015.

THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

By:   
Thomas K. Chenal, Chairman



# EXHIBIT B



0000167001

1 BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION  
2 LINE SITING COMMITTEE

3 IN THE MATTER OF THE APPLICATION OF ) DOCKET NO.  
4 SUNZIA TRANSMISSION LLC, IN ) L-00000YY-15-0318-  
5 CONFORMANCE WITH THE REQUIREMENTS OF ) 00171  
6 ARIZONA REVISED STATUTES 40-360, ET ) CASE NO. 171  
7 SEQ., FOR A CERTIFICATE OF )  
8 ENVIRONMENTAL COMPATIBILITY )  
9 AUTHORIZING THE SUNZIA SOUTHWEST )  
10 TRANSMISSION PROJECT, WHICH INCLUDES )  
11 THE CONSTRUCTION OF TWO NEW 500KV )  
12 TRANSMISSION LINES AND ASSOCIATED )  
13 FACILITIES ORIGINATING AT A NEW )  
14 SUBSTATION (SUNZIA EAST) IN LINCOLN )  
15 COUNTY, NEW MEXICO, AND TERMINATING )  
16 AT THE PINAL CENTRAL SUBSTATION IN )  
17 PINAL COUNTY, ARIZONA. THE ARIZONA )  
18 PORTION OF THE PROJECT IS LOCATED )  
19 WITHIN GRAHAM, GREENLEE, COCHISE, )  
20 PINAL, AND PIMA COUNTIES. )

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18 Arizona Corporation Commission REPORTER'S TRANSCRIPT OF PROCEEDINGS

19 DOCKETED

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(Pages 2472 through 2708)

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1 pro se intervenors' proposed conditions, and it was  
2 specifically responding to pro se intervenors' 8.

3 CHMN. CHENAL: You are losing me, Mr. Robertson.  
4 Can you maybe restate that, which one this relates to?  
5 I am sorry, it has just a lot of numbers.

6 MR. ROBERTSON: I am also. And I may be  
7 throwing too many numbers together too quickly.

8 I am addressing Condition 27, and I was  
9 providing some background that yesterday there was a  
10 slide that was discussed early in the hearing that was  
11 the applicant's slide 6 that had been prepared in  
12 response to the pro se intervenors' conditions. And the  
13 pro se intervenors' condition that was the subject of  
14 slide 6 was Condition No. 8.

15 Now, that was dealt with as a part of the  
16 settlement agreement with the pro se intervenors, but we  
17 discussed this topic with them last night and decided to  
18 add a proposed condition to the CEC that would address  
19 that topic. And the words that were added during the  
20 course of yesterday's discussion, or last evening, as  
21 they now appear in this condition are the words and  
22 cultural landscape study, as it appears in the second  
23 line, and then towards the end of this particular  
24 condition adding the words as required by before the  
25 words the programmatic agreement.

1 CHMN. CHENAL: So just to simplify it, is the  
2 language that's up on the screen on the left-hand side,  
3 which is applicant's proposed 27, is that acceptable to  
4 the intervenors?

5 MS. McVIE: Mr. Chairman, it is.

6 CHMN. CHENAL: All right.

7 MEMBER OLEA: I would move Condition No. 27.

8 MEMBER HAMWAY: Second.

9 CHMN. CHENAL: We have a motion and second for  
10 that 27. Any further discussions?

11 (No response.)

12 CHMN. CHENAL: All right. All in favor of 27  
13 say aye.

14 (A chorus of ayes.)

15 CHMN. CHENAL: Opposed, nay.

16 (No response.)

17 CHMN. CHENAL: Ayes have it. 27 is adopted.

18 No. 28, please.

19 MR. ROBERTSON: Condition No. 28, we will be  
20 putting up a map on the screen to depict the Paige  
21 Canyon area. But this evolved out of yesterday's  
22 discussion about the pro se intervenors' concern with  
23 respect to paralleling Paige Canyon last evening.  
24 Included among our topics of discussion with the  
25 intervenors was a way to possibly do that. Those

# EXHIBIT C

**Programmatic Agreement  
Among  
The Bureau of Land Management,  
New Mexico State Office  
Arizona State Historic Preservation Officer  
New Mexico State Historic Preservation Officer  
Advisory Council on Historic Preservation  
United States Army Corps of Engineers  
Bureau of Indian Affairs, San Carlos Irrigation Project  
Tohono O’odham Nation  
New Mexico State Land Office  
The Arizona State Museum  
Arizona State Land Department and  
SunZia Transmission, LLC  
Regarding the  
SunZia Southwest Transmission Project**

1. **Whereas**, SunZia Transmission, LLC, intends to construct, operate and maintain the SunZia Southwest Transmission Project (Undertaking) according to general parameters contained in the project Plan of Development (POD), summarized in the Undertaking Description (Attachment 1) and;
2. **Whereas**, the BLM intends to issue a right-of-way grant for the construction, operation and maintenance of the SunZia Southwest Transmission Project, and the right-of-way grant will reference this PA; and
3. **Whereas**, this Programmatic Agreement (PA) and the Historic Properties Treatment Plan (HPTP) that will be developed pursuant to this PA will be incorporated into the POD; and
4. **Whereas**, the New Mexico State Office of the Bureau of Land Management (BLM) is a Signatory to this Agreement and has been designated to serve as the federal lead agency for the Project and in consultation with other parties has determined that the Undertaking will have an adverse effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP); and
5. **Whereas**, the BLM has consulted with the New Mexico State Historic Preservation Officer and the Arizona State Historic Preservation Officer (SHPO), pursuant to Section 800.6 of the regulations (36 CFR part 800) implementing Section 106 of the National Historic Preservation Act (NHPA) (16 USC § 470f) and they are Signatories to this Agreement; and
6. **Whereas**, the BLM has notified the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR § 800.6(a) (1)(i)(C) that the Undertaking will have adverse effects on properties listed on or eligible for listing on the NRHP (8-14-12) and the ACHP has agreed to participate to resolve adverse effects and is a Signatory to this Agreement (8-27-12); and

manager with a Summary report describing the results of the additional studies and a request for concurrence on the determination of eligibility. The SHPO will review these determinations of eligibility and respond to the BLM within 30 calendar days. If the SHPO does not respond to the BLM within 30 calendar days, the BLM will assume concurrence with the determination(s) of NRHP eligibility.

## II. Avoiding and Minimizing the Adverse Effects of the Undertaking on Historic Properties

- A. The BLM shall, if possible, avoid adverse effects to all types of historic properties, with input from Consulting Parties.
  1. Avoidance measures for cultural resources may include (but are not limited to) realignment of the transmission line, fencing of sites during construction, monitoring of construction near site areas, or placing towers, maintenance roads and ancillary facilities outside of site boundaries.
  2. The BLM shall develop avoidance measures for any properties of traditional religious and cultural importance in consultation with the SHPO and affected tribes or Native American groups who ascribe traditional religious and cultural importance to the properties.
  3. The BLM shall identify measures to avoid adverse effects from operation and maintenance activities to those historic properties remaining within the right-of-way, and shall incorporate these measures in the HPTP in accordance with Stipulation III.A.
- B. Where avoidance is not possible, the BLM shall minimize or mitigate adverse effects to historic properties, if possible, with input from Consulting Parties.
- C. If any Indian tribes or other Native American groups have expressed concerns about effects on properties to which they ascribe traditional religious and cultural importance, BLM shall consult with them and the appropriate SHPO about possible measures to resolve the adverse effects and ensure that those measures are properly considered in the development of the HPTP.
- D. For state and private land in New Mexico, if the adverse effect is to a property listed in the State Register of Cultural Properties or NRHP, and the property is on land owned, controlled or operated by a state agency or political subdivision of the state, the agency or political subdivision shall determine whether NMSA 1978 § 18-8-7 of the Prehistoric and Historic Preservation Act, NMSA 1978 applies. The agency or political subdivision should contact the New Mexico SHPO for assistance in making this determination and satisfying the requirements of 4.10.12 New Mexico Administrative Code (NMAC).

## III. Resolution of Adverse Effects: Development of the HPTP

- A. The BLM shall ensure that the Applicant prepares an HPTP for each state that will address the effects of the proposed Undertaking on historic properties during the Undertaking, including traditional cultural properties (TCPs) as discussed in National Register Bulletin No. 38. The HPTP shall address potential direct, indirect and cumulative effects from construction and reclamation as well as from operation and maintenance of the proposed transmission lines and associated facilities. The HPTP will be incorporated into the POD as an appendix and will:

1. Identify the nature of the effects to historic properties and describe the strategies proposed to avoid, minimize, or mitigate those effects.
2. Identify cultural resources that will be affected by the Undertaking for which NRHP eligibility determinations could not be made, and will specify the strategy for determining eligibility. It will further specify the strategy that will be used in the event that these cultural resources are determined to be eligible as a result of the testing/study phase. Stipulations I.G and I.H will be followed for determining eligibility.
3. Be consistent with the Secretary of the Interior's Standards and Guidelines (48 CFR 44716-44742); the ACHP's handbook, Section 106 Archaeology Guidance (<http://www.achp.gov/archguide>); the rules implementing the AAA and 36 CFR§ 800.13, Post-Review Discoveries, and in so doing will incorporate provisions for monitoring and inadvertent discoveries.
4. At a minimum, the HPTP will specify and include:
  - a. The historic properties to be affected by the Undertaking and the nature of those effects.
  - b. The historic properties to be avoided and applicable avoidance measures, pursuant to Stipulation II.
  - c. The historic properties where harm will be minimized and applicable measures to minimize harm.
  - d. The properties at which adverse effects will be mitigated through scientific data recovery or other means.
  - e. For archaeological resources, research questions and goals that are applicable to the Undertaking area and which can be addressed through data recovery and archival studies, along with an explanation of their relevance and importance. These research questions and goals will incorporate the concept of historic contexts as defined in National Register Bulletin 16.
  - f. Fieldwork and analytical methods and strategies applicable to the Undertaking area, along with an explanation of their relevance to the research questions when dealing with archaeological resources. Treatment methods will be developed for each class of property identified in the Inventory report and may include excavation, scientific studies outside of the right-of-way, archival research, off-site interpretation, remote sensing, ethnographic studies, and oral history, as appropriate.
  - g. The level of effort to be expended on the treatment of each property. For archaeological resources this will include methods of sampling, i.e., sample size, and rationale for specific sample unit selection.
  - h. Data management and dissemination methodologies, including a proposed schedule of reports.
  - i. A Monitoring and Discovery Plan which will be a standalone appendix to the HPTP. It will contain:



- 1) A monitoring plan to be used during construction and reclamation.
  - 2) A discovery plan consistent with Stipulation VI to be used during the entire Undertaking.
  - 3) If appropriate, a monitoring plan to be used for operations and maintenance monitoring in accordance with Stipulation III.E. This plan will be developed in consultation with the Consulting Parties and will be added after treatment activities are concluded. Any reports resulting from post-construction monitoring will be submitted to the Consulting Parties in accordance with Stipulation X.A.3.
  - 4) All monitoring shall have clearly stated objectives and methodologies for achieving those objectives, such as to ensure impact avoidance or minimization during construction and reclamation; to measure the effectiveness of avoidance, minimization and mitigation measures; to assess the effects of operations and maintenance activities, or to provide baseline information to help define treatments for historic properties with long-term concerns.
- j. A Project Termination Plan with provisions for the following programs to be implemented in the event that the Undertaking is terminated for any reason:
- 1) A program outlining the steps to be taken in order to complete any data recovery or other treatment measures that are in progress at the time of project termination; and
  - 2) A component outlining how analysis, interpretation, reporting, and curation for all historic properties will be completed.
- k. A NAGPRA (of 1990 (25 USC § 3002) Plan of Action (POA) which includes methods and procedures for the discovery and/or treatment of human remains, associated funerary objects, and sacred objects that reflect any concerns and/or conditions identified as a result of consultations between the BLM and the appropriate Tribes. This POA will be consistent with 36 CFR § 800.13, NAGPRA and:
- 1) In Arizona on non-federal land, methods and procedures will be consistent with ARS § 41-844 and ARS § 41-865 and their implementing rules.
  - 2) In Arizona, the Applicant, working through the ASM, shall obtain “burial agreements” with Indian tribes pursuant to ARS § 41-844 and ARS § 41-865, that govern discoveries of human remains and funerary objects on state and private lands. The ASM shall invite tribes expressing interest in the Undertaking to participate in development of burial agreements. The ASM shall provide participating tribes, the Applicant and the BLM with a draft of the burial agreement for a 30-calendar-day review.
  - 3) In New Mexico on non-federal land, the methods and procedures will be consistent with the Cultural Properties Act NMSA 1978, § 18-6-11.2 and 4.10.11 NMAC.

- a. If historic properties exist in the variance APE and cannot be avoided, a Treatment Plan for those properties will be developed and shall be consistent with the HPTP developed pursuant to Stipulation III of this Agreement.
- b. Review procedures shall follow Stipulation III.D.
- c. The supplemental Treatment Plan shall be incorporated into the HPTP and a preliminary Summary Report will be prepared and distributed in accordance with Stipulation III.D.
- d. The BLM shall ensure that the results of such treatment efforts are reported in the final Treatment Report for the Undertaking.
- e. Once the BLM determines that the approved treatment has been completed, the BLM shall provide the Applicant's CRC with written approval of the variance via electronic mail.

V. **Authorization of Construction**

Requests for authorizations of construction will be approved only if such authorizations will not restrict subsequent measures to avoid, minimize or mitigate the adverse effects to historic properties through rerouting of the corridor, or placement of ancillary facilities.

- A. **No Historic Properties Present:** Upon the BLM's acceptance of the final Inventory Report for each state, described in Stipulation I, the BLM, at its discretion, and pending compliance with all other applicable laws and regulations, may authorize the Applicant to begin construction on lands under any ownership or jurisdiction, subject to the appropriate jurisdiction's right-of-entry and right-of-way requirements, where there are no historic properties present.
- B. **No Adverse Effect:** Upon the BLM's acceptance of the final HPTP for each state, the BLM, at its discretion, and pending compliance with all other applicable laws and regulations, may authorize the Applicant to begin construction on lands under any ownership or jurisdiction, subject to the appropriate jurisdiction's right-of-entry and right-of-way requirements, where all effects to historic properties and unevaluated cultural resources will be avoided (as described in the approved HPTP) subject to the appropriate jurisdiction's right-of-entry and right-of-way requirements.
- C. **Adverse Effect:** Following acceptance of the Summary Report of treatment that has occurred at each site described in Stipulation III.D, the BLM, at its discretion, and pending compliance with all other applicable laws and regulations, may authorize the Applicant to begin construction on lands under any ownership or jurisdiction where provisions of the HPTP have been implemented, subject to the appropriate jurisdiction's right-of-entry and right-of-way requirements.

VI. Discoveries during the Undertaking

- A. If potential historic properties are discovered, or unanticipated effects occur to known historic properties, the BLM will implement the Monitoring and Discovery Plan. This plan will be included as a standalone appendix to the HPTP (see Stipulation III.A.4.i) and will incorporate the following:

### ATTACHMENT 3: DEFINITIONS FOR TERMS USED IN THIS PA

**Adverse Effect** – Alteration of the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places.

**Area of Potential Effect (APE)** – The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR §800.16(d)).

**Authorized Officer** – The Authorized Officer for this Undertaking is the BLM New Mexico State Director and/or his or her delegated representative.

**Consultation** – The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matter that arise in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

**Consulting Party** – Any party that has participated in the development of this PA and has indicated intent to participate in consultations during its implementation either by signing in concurrence or by written notification to the Agency Official. The refusal of any party invited to sign the Agreement, other than the Signatories, does not invalidate the Agreement. Consulting Parties include:

**Signatory** – Parties who have legal or financial responsibilities for completions of stipulations of the Agreement. The signatories have sole authority to execute the Agreement, and together with the invited signatories, to amend or terminate the Agreement.

**Invited Signatory** – The authorized official may invite additional parties to sign the agreement and upon signing, they have the same rights with regard to amendments and termination as the signatories. These parties have legal responsibility in terms of the Undertaking, such as the issuance of a permit, license or right-of-way, and they have a compliance responsibility under the NHPA or a state cultural resource statute.

**Concurring Party** – A party who signs this Agreement but is not legally or financially responsible for completion of stipulations set forth in the Agreement.

**Construction** – The construction phase begins when BLM has issued a right-of-way grant to the proponent for the Undertaking. It includes all activities related to construction of the Undertaking, including activities required to be completed in advance of construction, as well as all activities completed in order to reclaim lands disturbed during construction for two years after construction is completed or until cost recovery agreements related to construction expire.

**Cultural Resource** – Any location of human activity, occupation, or use identifiable through field inventory, historical documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, landscapes, buildings, structures, objects, and places that possess historic and/or cultural significance as well as 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 may be but are not necessarily eligible for the NRHP; these properties have not been evaluated for NRHP eligibility.

# EXHIBIT D

# • NATIONAL REGISTER • BULLETIN

Technical information on comprehensive planning, survey of cultural resources, and registration in the National Register of Historic Places.

U.S. Department of the Interior  
National Park Service  
Interagency Resources Division

## Guidelines for Evaluating and Documenting Traditional Cultural Properties



As the Nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering the wisest use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our nation parks and historical places, and providing for the enjoyment of life through outdoor recreation. The Department assesses our energy and mineral resources and works to assure that their development is in the best interests of all our people. The Department also has a major responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.



#### Cover photographs:

Many traditional cultural properties are used for practical purposes by those who value them. This sedge preserve in northern California, for example, is tended and harvested by Pomo Indian basketmakers as a vital source of material for making their world famous baskets. The preserve was established at Lake Sonoma by the U.S. Army Corps of Engineers. (Richard Lerner)

This bedrock mortar in central California plays an essential role in processing Black Oak acorns. (Theodoratus Cultural Research)

# Guidelines for Evaluating and Documenting Traditional Cultural Properties

By Patricia L. Parker  
and Thomas F. King<sup>1</sup>

## Introduction

### What are traditional cultural properties?

The National Register of Historic Places contains a wide range of historic property types, reflecting the diversity of the nation's history and culture. Buildings, structures, and sites; groups of buildings, structures or sites forming historic districts; landscapes; and individual objects are all included in the Register if they meet the criteria specified in the National Register's *Criteria for Evaluation* (36 CFR §60.4). Such properties reflect many kinds of significance—in architecture, history, archeology, engineering, and culture.

There are many definitions of the word "culture," but in the National Register programs the word is understood to mean the traditions, beliefs, practices, lifeways, arts, crafts, and social institutions of any community, be it an Indian tribe, a local ethnic group, or the people of the nation as a whole.<sup>2</sup>

One kind of cultural significance a property may possess, and that may

make it eligible for inclusion in the Register, is *traditional cultural significance*. "Traditional" in this context refers to those beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through practice. The traditional cultural significance of a historic property, then, is significance derived from the role the property plays in a community's historically rooted beliefs, customs, and practices. Examples of properties possessing such significance include:

- a location associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world;
- a rural community whose organization, buildings and structures, or patterns of land use reflect the cultural traditions valued by its long-term residents;
- an urban neighborhood that is the traditional home of a particular cultural group, and that reflects its beliefs and practices;
- a location where Native American religious practitioners have historically gone, and are known or

thought to go today, to perform ceremonial activities in accordance with traditional cultural rules of practice; and

- a location where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining its historical identity.

A traditional cultural property, then, can be defined generally as one that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. Various kinds of traditional cultural properties will be discussed, illustrated,

<sup>1</sup> Dr. Parker is a cultural anthropologist and archeologist in the National Park Service's Interagency Resources Division. Dr. King was Senior Archeologist and Director of the Office of Program Review and Education in the Advisory Council on Historic Preservation at the time this Bulletin was drafted; he is now in private practice as a consultant in archeology and historic preservation.

<sup>2</sup> For a detailed definition, see Appendix I.



Numerous black people left the South to migrate to the Midwest. The A.M.E. Church (on the left) and District No. 1 School remain in Nicodemus Historic District in Nicodemus, Kansas, which was declared a National Historic Landmark by the Secretary of the Interior in 1976. (Clayton B. Fraser for the Historic American Buildings Survey)

who value them have a special reason for revealing the information—for example, a perception that the property is in some kind of danger.

Particularly because properties of traditional cultural significance are often kept secret, it is not uncommon for them to be “discovered” only when something threatens them—for example, when a change in land-use is proposed in their vicinity. The sudden revelation by representatives of a cultural group—which may also have other economic or political interests in the proposed change—can lead quickly to charges that the cultural significance of a property has been invented only to obstruct or otherwise influence those planning the change. This may be true, and the possibility that traditional cultural significance is attributed to a property only to advance other, unrelated interests should be carefully considered. However, it also may be that until the change was proposed, there simply was no reason for those who value the property to reveal its existence or the significance they ascribe to it.

Where ethnographic, ethnohistorical, historical, or other sources identify a property as having cultural significance, but contemporary sources say that it lacks such significance, the interests of the contemporary sources should be carefully considered. Individuals who have economic interests in the potential development of an area may be strongly motivated to deny its cultural significance. More subtly, individuals who regard traditional practices and beliefs as backward and contrary to the best contemporary interests of the group that once ascribed significance to a property may feel justified in saying that such significance has been lost, or was never ascribed to the property. On the other hand, of course, it may be that the documentary sources are wrong, or that the significance ascribed to the property when the documents were prepared has since been lost.

Similar consideration must be taken into account in attempting to reconcile conflicting contemporary sources. Where one individual or group asserts that a property has traditional cultural significance, and another asserts that it does not, or

where there is disagreement about the nature or extent of a property's significance, the motives and values of the parties, and the cultural constraints operating on each, must be carefully analyzed.

In general, the only reasonably reliable way to resolve conflict among sources is to review a wide enough range of documentary data, and to interview a wide enough range of authorities to minimize the likelihood either of inadvertent bias or of being deliberately misled. Authorities consulted in most cases should include both knowledgeable parties within the group that may attribute cultural value to a property and appropriate specialists in ethnography, sociology, history, and other relevant disciplines.<sup>8</sup>

### Determining Eligibility: Step by Step

Whether a property is known in advance or found during an identification effort, it must be evaluated with reference to the National Register Criteria for Evaluation (36 CFR Part 60) in order to determine whether it is eligible for inclusion in the Register. This section discusses the process of evaluation as a series of sequential steps. In real life, of course, these steps are often collapsed into one another or taken together.

#### Step One: Ensure that the entity under consideration is a property

Because the cultural practices or beliefs that give a traditional cultural property its significance are typically still observed in some form at the time the property is evaluated, it is sometimes perceived that the intangible practices or beliefs themselves, not the property, constitute the subject of evaluation. There is naturally a dynamic relationship between tangible and intangible traditional cultural resources, and the beliefs or practices associated with a traditional cultural property are of central importance in defining its significance. However, it should be clearly

<sup>8</sup> For excellent examples of studies designed in whole or in part to identify and evaluate traditional cultural properties based on both documentary sources and the testimony of contemporary consultants, see Bean and Vane 1978; Carroll 1983; Johnston and Budy 1983; Stoffle and Dobyms 1982, 1983; Theodoratus 1979.

recognized at the outset that the National Register does not include intangible resources themselves. The entity evaluated must be a tangible property—that is, a district, site, building, structure, or object.<sup>9</sup> The relationship between the property and the beliefs or practices associated with it should be carefully considered, however, since it is the beliefs and practices that may give the property its significance and make it eligible for inclusion in the National Register.

Construction by human beings is a necessary attribute of buildings and structures, but districts, sites, and objects do not have to be the products of, or contain, the work of human beings in order to be classified as properties. For example, the National Register defines a “site” as “the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure.”<sup>10</sup> Thus a property may be defined as a “site” as long as it was the location of a significant event or activity, regardless of whether the event or activity left any evidence of its occurrence. A culturally significant natural landscape may be classified as a site, as may the specific location where significant traditional events, activities, or cultural observances have taken place. A natural object such as a tree or a rock outcrop may be an eligible object if it is associated with a significant tradition or use. A concentration, linkage, or continuity of such sites or objects, or of structures comprising a culturally significant entity, may be classified as a district.

In considering the eligibility of a property that contains no observable evidence of human activity, however, the documentary or oral evidence for the association of the property with traditional events, activities or observances should be carefully weighed and assessed. The National Register discourages the nomination of natural features without sound documentation of their historical or cultural significance.

<sup>9</sup> See National Register Bulletin 15, *Guidelines for Applying the National Register Criteria*, for discussion of property types.

<sup>10</sup> See National Register Bulletin 16.



# EXHIBIT E



Katie Hobbs  
Governor

# ARIZONA STATE PARKS & TRAILS

Bob Broscheid  
Executive Director



August 3, 2023

Laura Hronec, Deputy State Director  
Bureau of Land Management – New Mexico State Office  
301 Dinosaur Trail  
Santa Fe, New Mexico 87508

RE: Continued Section 106 Consultation; BLM 2800(9300); SunZia Historic Properties Treatment Plan (HPTP); SHPO-2009-0850(169977)

Dear Ms. Hronec:

Attention: Jane Childress

Thank you for continuing consultation on the above-referenced project. At the request of the BLM, SHPO has reviewed the Historic Properties Treatment Plan (HPTP) entitled *A Historic Properties Treatment Plan for the SunZia Southwest Transmission Line Project Phase One Line in Arizona* (Swanson et al. 2023).

We offer the following general comments:

The SHPO strongly believes that the HPTPs prepared in conjunction with Section 106 of the National Historic Preservation Act compliance should address adverse effects to all classes of historic properties adversely affected by an undertaking. Furthermore, all forms of mitigation- not just archaeological data recovery- should be presented. We are greatly concerned by the lack of consideration of tribal values in the proposed research. We recommend that the BLM offer consulting tribes the opportunity to collaborate on the research to ensure that mitigation addresses effects to all character-defining features of identified Register-eligible historic properties, including their associative values. We recognize such information may be considered sensitive and confidential by tribes, and if these mitigations will be provided for in a separate, redacted or withheld document, the current HPTP should make reference to such.

The SHPO is also concerned of the lack of discussion regarding landscape level effects to historic properties. As the BLM is aware, consulting parties to the SunZia programmatic agreement have identified the San Pedro Valley as a cultural landscape. We recommend that documentation and National Register evaluation of this landscape (and any others that might be identified) utilizing appropriate historic contexts be considered as mitigation. These contexts could also be employed in generating mitigation for the three protohistoric sites in the project right-of-way (ROW). The collected information could then be used to help address landscape level effects to historic properties. If this mitigation is pursued by the BLM, it should also be described in the revised HPTP.

Our review also identified several other deficiencies in the HPTP, as follows:

1. As was discussed in our meeting on July 14, 2023, the area of potential effects, ROW, and limits of disturbance need to be identified correctly in the Introduction, and plan maps should be updated to depict the transmission line ROW.
2. We also recommend investigating portions of all sites outside of the limits of disturbance, but within the transmission line ROW; this sampling is not consistently applied to all sites.
3. There is a general statement that all prehistoric features located within 100 feet (30 meters) of the Limits of Disturbance, will be excavated. Historic features may also be encountered in a few locations; please add.
4. Monitoring and surface collection as a form of data recovery within a Register-eligible site is not sufficient treatment, particularly where the proposed disturbance consists of blading across the middle of the site (e.g., AZ AA:3:290[ASM]). We recommend hand excavation units or stripping units are more appropriate, placed both judgmentally and systematically across the site.
5. At some sites, excavation is proposed for only those features already identified and exploratory testing is necessary. Our preference is that monitoring should be used to minimize potential adverse effects through avoidance, with monitoring conducted within 30 m of recorded site boundaries.
6. The Research Design section does not address historic period sites, and data requirements for research questions should be discussed in more detail (e.g., “descriptions and diagrams”). Regarding site specific treatments, we recommend adding expectations for the number and types of features that may be encountered, and a strategy for sampling if significantly more features than expected are encountered.
7. The HPTP identifies potential cumulative adverse effects at several sites. We recommend adding a discussion to the HPTP (before the site-specific treatments) that addresses the nature and conditions under which these cumulative effects may occur, and include a summary of the cumulative effects analysis from the associated environmental document for the undertaking. Also address why additional data recovery, as proposed in the HPTP, is the appropriate mitigation for resolving cumulative effects. What other mitigations were considered?

Additional comments on the HPTP are provided below:

1. Introduction, 2<sup>nd</sup> paragraph: Please change: “which identifies the appropriate treatments to mitigate or avoid effects...” to “...avoid, minimize, or resolve adverse effects...”
2. Table 1. Treatment column: “Mitigation” should be revised to reflect the type of treatment, e.g., data recovery or avoidance monitoring.
3. Research Design: please list the questions using numeric or bullet points.
4. Research Domain 1: The third question includes the historic period, but this section only addresses prehistoric sites; please delete historic.
5. Historic Property Treatments:
  1. The first paragraph in this section (page 35) addresses prehistoric sites only, whereas treatments also include archival research and in-field analysis of historical artifacts (beginning on page 36). Note that a research design for historic period sites has not been presented in this document.
  2. Permitting (page 36) is not a treatment and should be removed from this section.
  3. Surface artifact collection (page 37) only addresses prehistoric artifacts but should also apply to diagnostic historical artifacts.
  4. SHPO does not fully support the use of auger tests, trowel tests and shovel tests (page 37) during phased data recovery within archaeological sites that have been determined

Register-eligible; rather they are generally used in support of identification testing or eligibility testing.

5. SHPO recommends a minimum of 5 m stripping areas, rather than 3 m (page 38).
6. Historic Artifacts (page 51) – please add references / sources used for artifact analyses.
7. Site maps (all):
  1. Please add land jurisdiction to maps where sites occur within multiple jurisdictions.
  2. Please identify graphically the location of previous archaeological investigations within the site boundary as it has implications for the proposed treatment strategy and archaeological sampling for the project.
8. Qualifications of Consultants (page 103) only addresses prehistoric archaeologists.
9. Additional comments specific to sites are provided below:
  1. Site AZ AA:8:6(ASM): We recommend treatment include trench excavation or stripping units within the limits of disturbance and potentially other portions of the site to identify any subsurface features.
  2. Site AZ AA:8:407(ASM) is a prehistoric trail segment with proposed treatment including archival research. We recommend that prehistoric trails be addressed in an assessment of the cultural landscape.

We recommend the HPTP should be revised to address all comments, at which time we can better evaluate the adequacy of the proposed archaeological sampling strategies. Please don't hesitate to contact me at 602.542.7120, or by email at [mwalsh@azstateparks.gov](mailto:mwalsh@azstateparks.gov) if you have any questions or if I can be of further assistance.

Sincerely,

Mary-Ellen Walsh, M.A.  
Cultural Resources Compliance Manager  
Arizona State Historic Preservation Office

# EXHIBIT F



August 3, 2023

Ms. Jane Childress  
Archaeologist  
Bureau of Land Management  
Las Cruces District Office  
1800 Marquess Street  
Las Cruces, NM 88005

**Subject: SunZia Transmission Project BLM 2800 (9300); SHPO 2009-0850 (141309)**

Dear Ms. Childress:

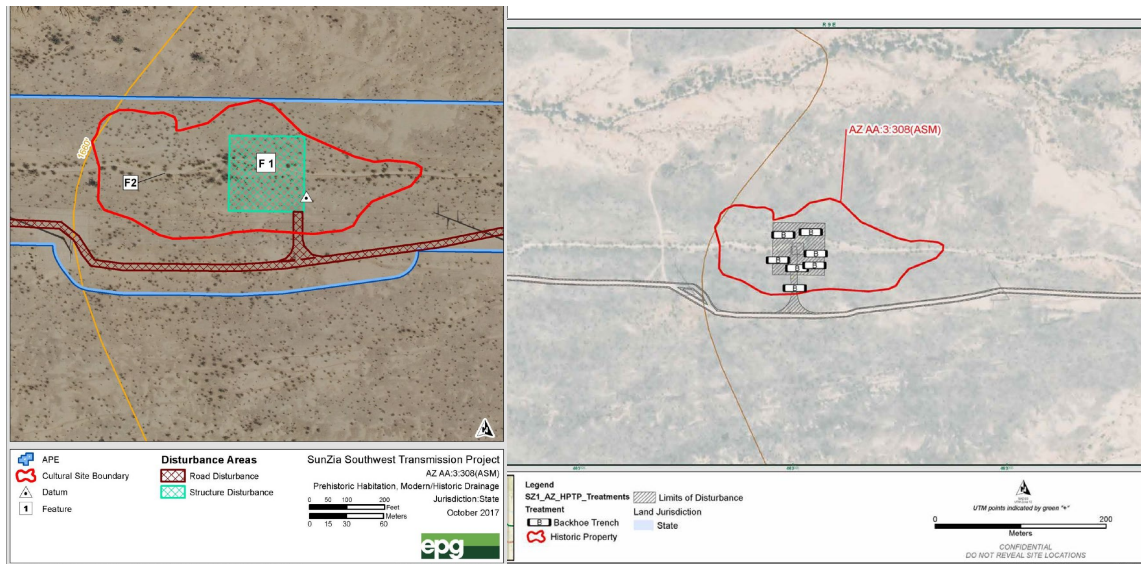
Following the concerns of project stakeholders expressed at the July 14, 2023 consulting parties meeting, Pima County finds the Historic Properties Treatment Plan that was presented on June 20<sup>th</sup>, 2023 is deficient in its current form. We express concerns with BLM and the Applicant's disregard for considering the full breadth of heritage resources that will be impacted by the undertaking, and disagree with any mitigation strategy that is limited only to the recovery and analysis of archaeological resources alone.

In accordance with Stipulation I(C), the Applicant has failed to provide a "comprehensive Inventory Report" that incorporates the full range of heritage resources that may be affected by the subject undertaking. Most notably is the omission of any identification of Traditional Cultural Places of spiritual and/or cultural importance to Native Nations. Pima County supports the need for meaningful and extensive consultation with Native Nations to understand the unique and vital cultural connections descendant communities hold at a landscape level.

In turning to the current draft of the Historic Properties Treatment Plan limited to mitigation of archaeological resources, the document is found to be generally inadequate based on the following comments:

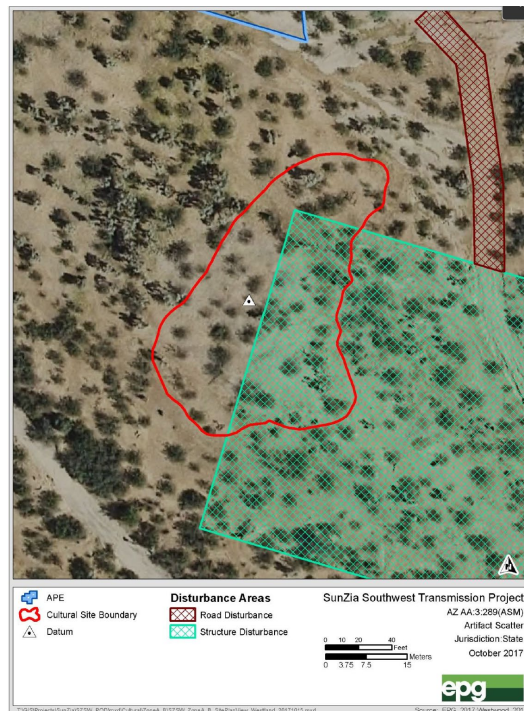
- HPTP should reference all previous work and summarize all findings/decisions made via the Section 106 process
  - PA calls for a "Comprehensive Inventory Report". Because addendum surveys were necessary, the HPTP should synthesize and summarize all previous work. Addendum surveys only covered new areas, and did not address changes from the time the original Class III was conducted. HPTP should cover, FOR EXAMPLE:
    - Summary of Class III surveys and all identified properties.
    - Comprehensive APE (original and addendum surveys combined)
    - Summary of determinations of eligibility for all properties identified during the surveys.
    - Summary of effect determinations for all properties
    - Current area of direct impacts, vs. what was presented in the Class III reports

- Area of Potential Effects must be redefined and depicted
  - Not defined or mentioned in the HPTP
  - Not depicted on any maps (need APE as reference in order to evaluate proposed mitigation strategies)
- Cumulative vs. Direct Effects – defined in the PA, but should be reintroduced in the HPTP with presentation and justification how each historic property was evaluated for effects.
  - How was “reasonably foreseeable” defined for any site in which areas outside direct effects are proposed for mitigation in the HPTP?
- “Limits of Disturbance”
  - Introduced and used throughout the HPTP but not defined in the PA nor the Class III survey reports.
  - Not a replacement for APE, and APE should be depicted and defined to evaluate treatment recommendations.
  - Site 308 as example: Treatment is presented as focused solely on direct impacts, and no assessment or explanation of cumulative impacts potentially associated with use of existing two-track road that bisects the site. Given that the defined access road is outside the site, there is no way to ensure that the existing road will not be used during construction or future maintenance and future impacts are possible.



- Historic properties located more than 100ft from the “Limits of Disturbance”
  - “If project design modifications result in shifting of the limits of disturbance to within 100 feet of an avoided historic SZ1 property that is not a linear feature, then archaeological avoidance monitoring will become required.” Pg. 3
    - Where did the 100ft come from?
  - Project design should be complete before an HPTP is drafted. Either the site will be avoided and no monitoring is required, OR the site will require monitoring because of direct or cumulative effects. Given that these historic properties are located within the APE and presumably the SunZia ROW, future actions by SunZia must be reviewed to ensure consideration of adverse effects.
- Historic properties along existing access roads

- What are the protocols to protect site components outside existing access roads? Will there be signage or markings indicating sensitive areas?
- What will monitoring consist of? Watching vehicles drive over the access road?
- Archaeological avoidance monitoring
  - Context is missing for how this treatment was determined for these 17 historic properties
  - Example Site AZ AA:3:289(ASM) – Class III (pg. 53) depicts site clearly within proposed structure pad disturbance and recommended treatment was data recovery to resolve adverse effects. HPTP presents no site treatment summary for this site with description of how treatment recommendation has changed since Class III, and no map in relation to APE. Was the structure pad relocated and therefore the site is now avoided? No map showing where the new structure is located in relation to the historic property.



- Historic Properties that require mitigation
  - Treatment descriptions do not match maps
    - EG. Text calls for treatments that are not depicted on maps
  - Evaluation of adequacy of proposed treatments require visual representation of disturbance areas in relation to APE, as well as justification for any proposed treatment of cumulative effects in relation to APE with an accompanying description of “foreseeable future actions” that justify mitigation.

We appreciate your consideration of these comments.

Sincerely,

Ian M. Milliken

*Cultural Resources & Historic Preservation Division Manager*



# EXHIBIT G



Hon. Terry Rambler  
Chairman, San  
Carlos Apache Tribe



William H. Doelle, PhD.  
President & CEO,  
Archaeology Southwest



Hon. Ned Norris Jr.  
Chairman, Tohono  
O'odham Nation

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August 4, 2023

The Honorable Secretary Deb Haaland  
U.S. Department of the Interior  
1849 C Street, N.W., Washington, DC 20240  
Email: [officeofthesecretary@ios.doi.gov](mailto:officeofthesecretary@ios.doi.gov)

Ms. Tracy Stone-Manning, Director  
Bureau of Land Management  
U.S. Department of Interior  
1849 C Street NW  
Washington, DC 20240  
Fax: 970-256-4997  
E-M: [apautz@blm.gov](mailto:apautz@blm.gov)

Mr. Reid Nelson, Executive Director  
The President's Advisory Council on  
Historic Preservation  
401 F Street NW, Suite 308  
Washington, DC 20001  
E-M: [rnelson@achp.gov](mailto:rnelson@achp.gov)

Mr. Raymond Suazo, State Director  
U.S. Bureau of Land Management  
One North Central Ave., Ste. 800  
Phoenix, AZ 85004-4427  
Fax: 602-417-9398  
E-M: [blm\\_az\\_asoweb@blm.gov](mailto:blm_az_asoweb@blm.gov)

RE: Notice of Dispute Pursuant to the SunZia Undertaking Programmatic Agreement,  
Objecting to Failures to Complete the Historic Property Identification Process and to  
Failures to Continue Consultations with Indian Tribes Regarding Properties of Traditional  
Religious and Cultural Importance in the San Pedro Valley, Arizona

Dear Secretary Haaland, Executive Director Nelson, Director Manning, and State Director Suazo:

On behalf of the San Carlos Apache Tribe ("Tribe"), the Tohono O'odham Nation ("Nation"), and Archaeology Southwest ("ASW"), we hereby provide notice to the U.S. Bureau of Land Management ("BLM") that we dispute the BLM's historic property identification process and the BLM's failure to properly address the adverse effects to historic properties affected by the SunZia Southwest Transmission Project ("SunZia"). Furthermore, the Tribe and the Nation have not been provided the opportunity for meaningful government-to-government consultation. This notice is filed pursuant to the "Dispute Resolution" provisions (Page A1-19, Stipulation XIII) of the Programmatic Agreement ("PA"). The PA provides the essential and binding framework for resolving adverse effects to historic properties affected by the SunZia undertaking.

**Tracy Stone-Manning & Reid Nelson**

*Re: BLM Failure to Identify Historic Properties and Consult with Tribes*

August 3, 2023

Page 2 of 4

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The Nation, the Tribe, and ASW—together with the BLM, the Arizona State Historic Preservation Officer, the Advisory Council on Historic Preservation (“ACHP”), the Arizona State Museum, the Arizona State Land Department, SunZia Transmission, LLC, and others—are parties to the PA. The PA’s Stipulation XIII affirms that “any Consulting Party . . . [may] object at any time to any actions proposed or the manner in which the terms of this PA are implemented, [and] the BLM shall consult with such party to resolve the objection.” PA Stipulation I. F. requires BLM to “continue to consult with Indian tribes regarding properties of traditional religious and cultural importance to them that might be affected by the Undertaking,” noting that the “consultation process will remain open for any tribe that expresses a desire to participate.” PA Stipulation VI (“Discoveries during the Undertaking”), anticipates prospects for a “discovered cultural resource . . . identified by an Indian tribe as a property of traditional religious and cultural importance,” that is, a “TCP.”

We jointly object to BLM inattention to its obligations under the PA. The BLM has disregarded our requests to identify and consider TCPs, including the likelihood that the San Pedro Valley itself is a TCP or traditional cultural landscape eligible for listing in the National Register. On numerous occasions over more than a decade—and most recently in the enclosed letters from the Tribe on March 9, 2023, the Nation on March 16, and ASW on March 18—we have advised BLM of the presence of TCPs and of the cultural salience of the San Pedro Valley as a whole. BLM knows of our requests and of the need for additional consultations with affected Tribes and Nations and knowledgeable representatives of Tribes and Nations; however, our explicit requests for consultation have been ignored.

Despite multiple advisements to BLM regarding San Pedro Valley historical and cultural significance, BLM Director Stone-Manning’s June 30, 2023 responses to the Nation and Tribe make no mention of TCPs. That letter also ignores our specific requests for meaningful consultation and for protection of TCPs and other cultural resources in the path of the construction and operation of the SunZia transmission line in the San Pedro Valley.

These attempts to discount and evade the concerns of the Tribe and the Nation call into question BLM commitments to the Joint Secretarial Order No. 3403 on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters, especially the obligation to, “give consideration and deference to Tribal proposals, recommendations, and knowledge that affect management decisions on such lands.”

In light of the rapidly advancing undertaking schedule and the established BLM record of ignoring and disregarding information provided by the Tribe, Nation, and ASW, we are including ACHP Executive Director Nelson in this notice. We are also requesting the exclusion of BLM National Project Support Office staff from direct involvement with consultations pursuant to this dispute.

**Tracy Stone-Manning & Reid Nelson**

*Re: BLM Failure to Identify Historic Properties and Consult with Tribes*

August 3, 2023

Page 3 of 4

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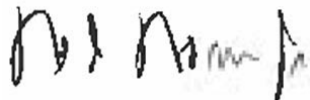
BLM also now appears to be committed to attempts to shortcut and diminish its responsibilities pursuant to the regulations at 36 CFR 800.4 (1 – 4), including requirements to:

- 1) “document the area of potential effects” – BLM officials continue to refuse requests from consulting parties to provide high resolution maps of the APE;
- 2) “Review existing information on historic properties within the area of potential effects”; BLM officials and proponent consultants have ignored and are ignoring readily available, peer-reviewed information specifically relevant to TCPs in the San Pedro Valley;
- 3) “Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area”; aside from *pro forma* consultations with Tribes on agendas set by BLM and visits to occasional visits to historic properties targeted for massive adverse effects, there have been few efforts to contact knowledgeable individuals, and certainly nothing like the “reasonable and good faith effort to carry out appropriate identification efforts” required at 800.4(b)(1); and
- 4) “Gather information from any Indian tribe . . . to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them”; again, no meaningful consultation, certainly nothing commensurate with the level of irrevocable, landscape-scale alteration being proposed or with the concerns raised by the Nation, the Tribe, and other consulting parties.

We look forward to restoring the Section 106 process for the SunZia undertaking to alignment with the PA and the regulations implementing the National Historic Preservation Act. We gratefully anticipate ACHP review of this dispute and, more generally, Federal Government reassertion of Indian fiduciary responsibilities and reestablishment of lawful, meaningful, and timely government-to-government consultations regarding the proposed SunZia undertaking.

Sincerely,

TOHONO O’ODHAM NATION



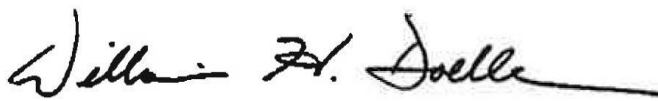
Ned Norris Jr, Chairman

SAN CARLOS APACHE TRIBE



Terry Rambler, Chairman

ARCHAEOLOGY SOUTHWEST



William H. Doelle, President & CEO

## Tracy Stone-Manning & Reid Nelson

*Re: BLM Failure to Identify Historic Properties and Consult with Tribes*

August 3, 2023

Page 4 of 4

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**Cc:** Arizona State Historic Preservation Officer, Kathryn Leonard, [kleonard@azstateparks.gov](mailto:kleonard@azstateparks.gov)  
Arizona State Museum Director Patrick Lyons, [plyons@arizona.edu](mailto:plyons@arizona.edu)  
Gila River Indian Community Governor, Hon. Stephen Roe Lewis, P. O. Box 97, Sacaton, AZ 85147  
Gila River Indian Community THPO, Barnaby Lewis, [Barnaby.Lewis@gric.nsn.us](mailto:Barnaby.Lewis@gric.nsn.us)  
Hopi Tribe Chairman, Hon. Timothy L. Nuvangyaoma, [TNUvangyaoma@hopi.nsn.us](mailto:TNUvangyaoma@hopi.nsn.us)  
Hopi Tribe Cultural Preservation Office Director, Stewart Koyiyumtewa, [SKoyiyumtewa@hopi.nsn.us](mailto:SKoyiyumtewa@hopi.nsn.us)  
Mescalero Apache Tribe President, Hon. Gabe Aguilar, [gaguilar@mescaleroapachetribe.com](mailto:gaguilar@mescaleroapachetribe.com)  
Mescalero Apache Tribe THPO, Holly Houghton, [holly@mathpo.org](mailto:holly@mathpo.org)  
National Trust for Historic Preservation, Elizabeth Merritt, [emerritt@savingplaces.org](mailto:emerritt@savingplaces.org)  
Pueblo of Zuni Governor, Hon. Val R. Panteah, Sr., [val.panteah@ashiwi.org](mailto:val.panteah@ashiwi.org)  
Pueblo of Zuni THPO, Kurt Dongoske, [kdongoske@cableone.net](mailto:kdongoske@cableone.net)  
Pueblo of Zuni ZCRAT, Octavius Seowtewa, [oct.seowtewa@gmail.com](mailto:oct.seowtewa@gmail.com)  
Tohono O'odham Nation THPO, Peter Steere, [peter.steere@tonation-nsn.gov](mailto:peter.steere@tonation-nsn.gov)  
US Army Corps of Engineers, Los Angeles District, Michael Langley, [michael.w.langley@usace.army.mil](mailto:michael.w.langley@usace.army.mil)  
San Carlos Apache Tribe Vice Chairman, Tao Etpison, [tao2k10@gmail.com](mailto:tao2k10@gmail.com)  
San Carlos Apache Tribe THPO, Vernelda Grant, [apachevern@yahoo.com](mailto:apachevern@yahoo.com)  
San Carlos Apache Tribe Attorney General, A.B. Ritchie, [Alex.Ritchie@scat-nsn.gov](mailto:Alex.Ritchie@scat-nsn.gov)

# EXHIBIT H



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
New Mexico State Office  
301 Dinosaur Trail  
Santa Fe, New Mexico 87508  
<https://www.blm.gov/new-mexico>

In Reply:  
2800 (9300)

Kathryn Leonard  
State Historic Preservation Officer  
1100 West Washington Street  
Phoenix, Arizona 85007

Attention: Mary Ellen Walsh  
RE: SunZia Transmission Project Revised Historic Properties Treatment Plan (HPTP) BLM  
2800 (9300); SHPO 2009-0850 (169977)

Dear Ms. Leonard:

Thank you for providing comments on the above-referenced HPTP for the SunZia Transmission Project. The report titled *A Historic Properties Treatment Plan for the SunZia Southwest Transmission Project Phase One Line in Arizona* by Environmental Planning Group has been revised based on your comments and the comments of other Consulting Parties. The revised report and the comment resolutions document are attached to this letter and electronic mail transmission.

In response to your general comments, we would like to clarify that the adverse effects to other classes of historic properties that will be affected by the SunZia Project (including Traditional Cultural Properties and cultural landscapes) will be presented in a separate HPTP that is under development at this time. This was stated in our cover letter transmitting the subject draft HPTP, and in the electronic mail that transmitted the HPTP to Consulting Parties.

Since the BLM is still in the process of developing this HPTP, which will address the recently identified middle San Pedro Valley, we will be consulting with the Tohono O'odham Nation and the San Carlos Apache Tribe, as well as other Consulting Parties to better define and understand the property. This approach will allow the time and space to develop meaningful methods for the resolution of adverse effects. A consultation meeting in accordance with PA stipulation III.B.1.b, will be held soon as possible to continue the development of this HPTP.

In accordance with PA stipulation III.B.2, this revised HPTP is being distributed to all Consulting Parties for a 21-calendar-day review. Then, “BLM, in consultation with the SHPO, shall approve the final HPTP.” We look forward to the implementation of this HPTP to resolve adverse effects to historic properties that will be directly and physically affected by the SunZia Project.

If you have any questions or require any additional information, please contact Jane Childress at [jchildre@blm.gov](mailto:jchildre@blm.gov) or (575) 525-4324.

Sincerely,

Laura Hronec  
Deputy State Director

Attachments:

Revised SunZia Arizona HPTP

Comment resolutions

CC: Consulting Parties (electronic mail)



# EXHIBIT I

**From:** Childress, Jane P <jchildre@blm.gov>  
**Sent:** Tuesday, August 29, 2023 7:55 AM  
**To:** Basham, Matthew P; Dalton, Clint A; Maloof, George O; Watkins, Timothy K; azshpo; Bill Marzella; jmarks@achp.gov; mwalsh; Larry Benallie; Peter Steere; apachevern\_contact; Holly Houghten; Henry Walt; Elaine Peters; Michael Darrow; Shannon Parkinson; Art Wilson; Austin Nunez; Carmen Narcia; David Tenario; Kim Encinas; Phil DuPont; Shane Anton; Museum Assistant; Martina.Minthorn@comanchenation.com; kellie@tribaladminsivices.org; Sunday Eiselt; Stewart Koyiyumptewa; kdongoske@gmail.com; Vernelda.grant@scat-nsn.gov; alex.ritchie@scat-nsn.gov; jefford.francisco@tonation-nsn.gov; Reylynne Williams; darius.enos@gric.nsn.us; karl.hoerig@pascuayaqui-nsn.gov; barnaby.lewis@gric.nsn.us; Sally Pablo; Samuel Fayuant; Jensen, Jill L; Deni Seymour; John Welch; Mahr, Aaron P; Paul Deason; Betsy Merritt; cartasecretary@gmail.com; healing@rnsmtc.com; Mark Howe; Jarrett, Jordan E; ARCH@azland.gov; hnuru@azland.gov; tgraham@azland.gov; Ian M. Milliken; Courtney Rose; Goldstein, Beau; Plummer, Shannon D - (splummer); Tiffany Grew; Winston.S.Zack@usace.army.mil; Cindy Freeman; Steve Swanson; Adrienne Tremblay; Kate Tiffany; natalie.mccue@patternenergy.com; adam.cerneaclark@patternenergy.com; Alexiss Adams; Cates, Kari  
**Subject:** SunZia Arizona - revised direct effects Historic Properties Treatment Plan  
**Attachments:** SunZia Line One Arizona HPTP.pdf; AZ\_HPTP\_Comment\_Response\_Matrix Final.xlsx; SHPO response letter for Revised HPTP\_LJH.pdf

Hello everyone,

I have attached the revised report, the comment resolution document, and BLM's transmittal letter to the Arizona SHPO. Please keep in mind that this HPTP concerns the direct physical effects that will be resolved through the use of archaeological methods. A second HPTP is in development that will address sites and effects that are visual, indirect, cumulative or concern landscapes, TCPs and tribal values. This developing HPTP will cover the middle San Pedro Valley TCP/cultural landscape.

In accordance with the SunZia PA, stipulation III.B.2, this revised plan is being "distributed to all Consulting Parties for a 21-calendar-day review period. BLM, in consultation with the SHPO, shall approve the final HPTP. The BLM will notify the Applicant and the Consulting Parties when the final HPTP has been approved."

If you have any additional comments or concerns, please respond to me by September 18, 2023.

Thank you,  
Jane

Jane Childress  
Archaeologist  
Bureau of Land Management  
National Project Support  
*stationed at:*  
Las Cruces District Office  
1800 Marquess Street  
Las Cruces, New Mexico 88005  
(575) 525-4324

# EXHIBIT J

## Interest in Meeting Regarding SunZia PA Dispute Resolution



Barnes, Melanie G <MGBarnes@blm.gov>

To wdoelle@archaeologysouthwest.org; JWelch@archaeologysouthwest.org


↩ Reply

↩ Reply All

→ Forward



Wed 9/27/2023 2:17 PM

 You replied to this message on 10/5/2023 1:49 PM.

President Doelle and Director Welch,

I am writing today to follow up on the correspondence you received from BLM Director Stone-Manning regarding the Sun Zia Transmission Line Project in New Mexico and Arizona.

In particular, I would like to gauge your interest in participating in a meeting with the BLM regarding your invocation of the dispute resolution process in the agreement. The BLM is committed to ongoing consultation with your organization regarding this dispute and would very much like to work with you to mutually resolve it.

In addition, the Historic Properties Treatment Plan to resolve non-physical adverse effects to historic properties, such as effects that are visual, indirect, or to tribal values, is under development. Consultation on this plan would be an excellent opportunity to inform us further about the middle San Pedro Valley Traditional Cultural Property and provide input for measures to resolve adverse effects.

Please feel free to contact me if you have any questions or would like to set up a time to meet.

Thank you very much for your time and attention.

Sincerely,

Melanie Barnes



**Melanie G. Barnes, Ph.D.**

New Mexico State Director  
Bureau of Land Management

Phone: 505-954-2222 Email: [mgbarnes@blm.gov](mailto:mgbarnes@blm.gov)

301 Dinosaur Trail, Santa Fe, NM 87508

<http://www.blm.gov/new-mexico>



# EXHIBIT K

**From:** Childress, Jane P <jchildre@blm.gov>  
**Sent:** Friday, September 29, 2023 8:02 AM  
**To:** azshpo; Bill Marzella; jmarks@achp.gov; mwalsh; Basham, Matthew P; Dalton, Clint A; Maloof, George O; Watkins, Timothy K; Sanchez, Ruben J; Alguire, Virginia R; Martinez, Celina R; Larry Benallie; Peter Steere; apachevern\_contact; Holly Houghten; Henry Walt; Elaine Peters; Michael Darrow; Shannon Parkinson; Art Wilson; Austin Nunez; Carmen Narcia; David Tenario; Kim Encinas; Phil DuPont; shane.anton; Museum Assistant; Martina.Minthorn@comanchenation.com; kellie@tribaladminsivices.org; Eiselt, Sunday; Stewart Koyiyumptewa; kdongoske@gmail.com; Vernelda.grant@scat-nsn.gov; alex.ritchie@scat-nsn.gov; jefford.francisco@tonation-nsn.gov; Reylynn Williams; darius.enos@gric.nsn.us; karl.hoerig@pascuayaqui-nsn.gov; barnaby.lewis@gric.nsn.us; Sally Pablo; Samuel Fayuant; Jensen, Jill L; Deni Seymour; John Welch; Mahr, Aaron P; Paul Deason; Betsy Merritt; cartasecretary@gmail.com; healing@rnsmtc.com; Mark Howe; Jarrett, Jordan E; ARCH@azland.gov; hnuru@azland.gov; tgraham@azland.gov; Ian M. Milliken; Courtney Rose; Goldstein, Beau; Plummer, Shannon D - (splummer); Tiffany Grew; Winston.S.Zack@usace.army.mil  
**Cc:** Cindy Freeman; Steve Swanson; Adrienne Tremblay; Kate Tiffany; natalie.mccue@patternenergy.com; adam.cerneaclark@patternenergy.com; Alexiss Adams; Cates, Kari  
**Subject:** SunZia Arizona Historic Properties Treatment Plan finalization

Hello Consulting Parties,

In accordance with SunZia PA stipulation III.B.2, the BLM is providing notification to the Consulting Parties and the Proponent that the Arizona HPTP for direct, physical effects has been finalized in consultation with the Arizona SHPO.

If you have any questions, please reach out.

Take care,

Jane

Jane Childress  
Archaeologist  
Bureau of Land Management  
National Project Support  
*stationed at:*  
Las Cruces District Office  
1800 Marquess Street  
Las Cruces, New Mexico 88005  
(575) 525-4324

# EXHIBIT L

**From:** Bill Marzella <[bmarzella@achp.gov](mailto:bmarzella@achp.gov)>

**Sent:** Friday, October 6, 2023 12:12 PM

**To:** Childress, Jane P <[jchildre@blm.gov](mailto:jchildre@blm.gov)>; Basham, Matthew P <[mbasham@blm.gov](mailto:mbasham@blm.gov)>; Dalton, Clint A <[clintdalton@blm.gov](mailto:clintdalton@blm.gov)>; Maloof, George O <[gmaloof@blm.gov](mailto:gmaloof@blm.gov)>; Watkins, Timothy K <[twatkins@blm.gov](mailto:twatkins@blm.gov)>; azshpo <[azshpo@azstateparks.gov](mailto:azshpo@azstateparks.gov)>; Jamie Lee Marks <[jmarks@achp.gov](mailto:jmarks@achp.gov)>; mw Walsh <[mwalsh@azstateparks.gov](mailto:mwalsh@azstateparks.gov)>; Larry Benallie <[larry.benallie@gric.nsn.us](mailto:larry.benallie@gric.nsn.us)>; Peter Steere <[peter.steere@tonation-nsn.gov](mailto:peter.steere@tonation-nsn.gov)>; Vernelda Grant <[apachevern@yahoo.com](mailto:apachevern@yahoo.com)>; Holly Houghten <[holly@mathpo.org](mailto:holly@mathpo.org)>; Henry Walt <[henryj@toast.net](mailto:henryj@toast.net)>; Elaine F. Peters <[epeters@ak-chin.nsn.us](mailto:epeters@ak-chin.nsn.us)>; Michael Darrow <[shinii@aol.com](mailto:shinii@aol.com)>; Shannon Parkinson <[sparkinson@sandiapueblo.nsn.us](mailto:sparkinson@sandiapueblo.nsn.us)>; Art Wilson <[arthur.wilson@tonation-nsn.gov](mailto:arthur.wilson@tonation-nsn.gov)>; Austin Nunez <[agn@waknet.org](mailto:agn@waknet.org)>; Carmen Narcia <[cnarcia@ak-chin.nsn.us](mailto:cnarcia@ak-chin.nsn.us)>; David Tenario <[dtenario@waknet.org](mailto:dtenario@waknet.org)>; Kim Encinas <[kencinas@waknet.org](mailto:kencinas@waknet.org)>; Phil DuPont <[thpo@kiowatribe.org](mailto:thpo@kiowatribe.org)>; Shane Anton <[shane.anton@srpmic-nsn.gov](mailto:shane.anton@srpmic-nsn.gov)>; Museum Assistant <[museumassistant@kiowatribe.org](mailto:museumassistant@kiowatribe.org)>; Martina Minthorn <[Martina.Minthorn@comanchenation.com](mailto:Martina.Minthorn@comanchenation.com)>; kellie@tribaladminserves.org <[kellie@tribaladminserves.org](mailto:kellie@tribaladminserves.org)>; Sunday Eiselt <[sunday.eiselt@srpmic-nsn.gov](mailto:sunday.eiselt@srpmic-nsn.gov)>; Stewart Koyiyumptewa <[skoyiyumptewa@hopi.nsn.us](mailto:skoyiyumptewa@hopi.nsn.us)>; Kurt Dongoske <[kdongoske@gmail.com](mailto:kdongoske@gmail.com)>; Vernelda.grant@scat-nsn.gov <[Vernelda.grant@scat-nsn.gov](mailto:Vernelda.grant@scat-nsn.gov)>; alex.ritchie@scat-nsn.gov <[alex.ritchie@scat-nsn.gov](mailto:alex.ritchie@scat-nsn.gov)>; jefford.francisco@tonation-nsn.gov <[jefford.francisco@tonation-nsn.gov](mailto:jefford.francisco@tonation-nsn.gov)>; Reylynne Williams <[reylynne.williams@gric.nsn.us](mailto:reylynne.williams@gric.nsn.us)>; darius.enos@gric.nsn.us <[darius.enos@gric.nsn.us](mailto:darius.enos@gric.nsn.us)>; Karl Hoerig <[karl.hoerig@pascuayaqui-nsn.gov](mailto:karl.hoerig@pascuayaqui-nsn.gov)>; Barnaby Lewis <[barnaby.lewis@gric.nsn.us](mailto:barnaby.lewis@gric.nsn.us)>; Sally Pablo <[spablo@Waknet.org](mailto:spablo@Waknet.org)>; Samuel Fayuant <[Samuel.Fayuant@tonation-nsn.gov](mailto:Samuel.Fayuant@tonation-nsn.gov)>; Jensen, Jill L <[Jill\\_Jensen@nps.gov](mailto:Jill_Jensen@nps.gov)>; Deni Seymour <[denijseymour@aol.com](mailto:denijseymour@aol.com)>; John Welch <[jwelch@archaeologysouthwest.org](mailto:jwelch@archaeologysouthwest.org)>; Aaron Mahr-Yanez <[aaron\\_mahr@nps.gov](mailto:aaron_mahr@nps.gov)>; Paul Deason <[deasonp@gmail.com](mailto:deasonp@gmail.com)>; Betsy Merritt <[bmerritt@savingplaces.org](mailto:bmerritt@savingplaces.org)>; cartasecretary@gmail.com <[cartasecretary@gmail.com](mailto:cartasecretary@gmail.com)>; healing@rnsmtc.com <[healing@rnsmtc.com](mailto:healing@rnsmtc.com)>; Mark Howe <[mlhowe1@hotmail.com](mailto:mlhowe1@hotmail.com)>; Jarrett, Jordan E <[jordan\\_jarrett@nps.gov](mailto:jordan_jarrett@nps.gov)>; ARCH@azland.gov <[ARCH@azland.gov](mailto:ARCH@azland.gov)>; hnuru@azland.gov <[hnuru@azland.gov](mailto:hnuru@azland.gov)>; tgraham@azland.gov <[tgraham@azland.gov](mailto:tgraham@azland.gov)>; Ian M. Milliken <[ian.milliken@pima.gov](mailto:ian.milliken@pima.gov)>; Courtney Rose <[courtney.rose@pima.gov](mailto:courtney.rose@pima.gov)>; Beau Goldstein <[beau.goldstein@bia.gov](mailto:beau.goldstein@bia.gov)>; Plummer, Shannon D - (splummer) <[splummer@arizona.edu](mailto:splummer@arizona.edu)>; Tiffany Grew <[tgrew@azland.gov](mailto:tgrew@azland.gov)>; Winston.S.Zack@usace.army.mil <[Winston.S.Zack@usace.army.mil](mailto:Winston.S.Zack@usace.army.mil)>; Cindy Freeman <[cfreeman@southwesternpower.com](mailto:cfreeman@southwesternpower.com)>; Steve Swanson <[sswanson@epgllc.co](mailto:sswanson@epgllc.co)>; Adrienne Tremblay <[atremblay@swca.com](mailto:atremblay@swca.com)>; Kate Tiffany <[kate.tiffany@galileoaz.com](mailto:kate.tiffany@galileoaz.com)>; natalie.mccue@patternenergy.com <[natalie.mccue@patternenergy.com](mailto:natalie.mccue@patternenergy.com)>; adam.cerneaclark@patternenergy.com <[adam.cerneaclark@patternenergy.com](mailto:adam.cerneaclark@patternenergy.com)>; Alexis Adams <[aadams@southwesternpower.com](mailto:aadams@southwesternpower.com)>; Cates, Kari <[KCates@epgllc.co](mailto:KCates@epgllc.co)>

**Cc:** Ira Matt <[imatt@achp.gov](mailto:imatt@achp.gov)>; Christopher Koepfel <[ckoepfel@achp.gov](mailto:ckoepfel@achp.gov)>

**Subject:** RE: [External] SunZia Arizona - revised direct effects Historic Properties Treatment Plan

Hi Jane:

Thank you for providing the revised HPTP for Arizona, for subsequently informing the consulting parties that the report had been finalized and filed with the Arizona SHPO, and also for the recent construction map set. The ACHP has some concerns with how this and other reports and communications have been characterized; specifically, that this plan relies only on "archaeological methods" to resolve adverse effects on historic properties and the suggestion that it defers consideration of "Tribal values" to a future treatment plan.

Considering "Tribal values" through consultation should occur throughout the 106 process and reflected agreements and treatment plans. Additionally, the Section 106 implementing regulations at 36 CFR § 800.4(c)(1) state that federal agencies shall acknowledge the special expertise of Tribes in assessing the eligibility of historic properties that may possess religious and cultural significance to them. This expertise



extends to understanding what actions may cause adverse effects to those properties as well as the treatment methods that may be appropriate and necessary to resolve those adverse effects—regardless of the nature or type of historic property being affected. Federal agencies do not possess this special expertise, and therefore should rely on Tribes to provide feedback as to whether proposed treatment methods may or may not be appropriate, such as an overreliance on testing and data recovery, which in and of itself may constitute an additional adverse effect.

I also acknowledge that, as part of the ongoing PA dispute resolution process, John Welch of Archaeology SW recently pointed out that the approach of developing multiple HPTPs per state is inconsistent with the terms of the PA. Because there seems to be a direct correlation (in my understanding) of the final acceptance of each HPTP and the BLM's authorization of construction activities in each state, there would seem to be some discrepancy between the previously approved and current approaches. In order to avoid confusion or inconsistency with the PA, we would recommend that the BLM consider a second PA amendment to reconcile these approaches. Conversely, if it is the BLM's plan to combine these iterative reports into a single HPTP for each state, it would seem that the BLM cannot authorize construction until all parts of this report (considering all aspect's of the undertaking's effects on historic properties) have been finalized and approved.

Further, the ACHP released guidance in 2019 that clarifies to uses of "direct" and "indirect" in the Section 106 and NHPA contexts; namely, we clarified that if the effect comes from the undertaking at the same time and place with no intervening cause, it is considered "direct" regardless of its specific type (e.g., whether it is visual, physical, auditory, etc.). "Indirect" effects to historic properties are those caused by the undertaking that are later in time or farther removed in distance but are still reasonably foreseeable. I recognize that the SunZia PA predates this guidance, but in order to avoid any confusion or discrepancy between the PA and current best practices, I recommend that the BLM uses terminology that describes the actual nature of the effects being created by the undertaking (e.g., physical, auditory, visual, cumulative, etc.) rather than a reliance on "direct vs. indirect" which may no longer be accurate. A PA amendment could also serve to update this terminology throughout.

I hope these issues, which may be semantic but can have real impacts on how these documents are interpreted, can be resolved future revised drafts and communications. If you have any questions, the ACHP would be happy to discuss further, thank you.

**Bill Marzella**  
Program Analyst/BLM Liaison  
Advisory Council on Historic Preservation

**From:** Childress, Jane P <[jchildre@blm.gov](mailto:jchildre@blm.gov)>

**Sent:** Tuesday, August 29, 2023 10:55 AM

**To:** Basham, Matthew P <[mbasham@blm.gov](mailto:mbasham@blm.gov)>; Dalton, Clint A <[clintdalton@blm.gov](mailto:clintdalton@blm.gov)>; Maloof, George O <[gmaloof@blm.gov](mailto:gmaloof@blm.gov)>; Watkins, Timothy K <[twatkins@blm.gov](mailto:twatkins@blm.gov)>; azshpo <[azshpo@azstateparks.gov](mailto:azshpo@azstateparks.gov)>; Bill Marzella <[bmartzella@achp.gov](mailto:bmartzella@achp.gov)>; Jamie Lee Marks <[jmarks@achp.gov](mailto:jmarks@achp.gov)>; mwalsh <[mwalsh@azstateparks.gov](mailto:mwalsh@azstateparks.gov)>; Larry Benallie <[larry.benallie@gric.nsn.us](mailto:larry.benallie@gric.nsn.us)>; Peter Steere <[peter.steere@tonation-nsn.gov](mailto:peter.steere@tonation-nsn.gov)>; Vernelda Grant <[apachevern@yahoo.com](mailto:apachevern@yahoo.com)>; Holly Houghten <[holly@mathpo.org](mailto:holly@mathpo.org)>; Henry Walt <[henryj@toast.net](mailto:henryj@toast.net)>; Elaine F. Peters <[epeters@ak-chin.nsn.us](mailto:epeters@ak-chin.nsn.us)>; Michael Darrow <[shinii@aol.com](mailto:shinii@aol.com)>; Shannon Parkinson <[sparkinson@sandiapueblo.nsn.us](mailto:sparkinson@sandiapueblo.nsn.us)>; Art Wilson <[arthur.wilson@tonation-nsn.gov](mailto:arthur.wilson@tonation-nsn.gov)>; Austin Nunez <[agn@waknet.org](mailto:agn@waknet.org)>; Carmen Narcia <[cnarcia@ak-chin.nsn.us](mailto:cnarcia@ak-chin.nsn.us)>; David Tenario <[dtenario@waknet.org](mailto:dtenario@waknet.org)>; Kim Encinas <[kencinas@waknet.org](mailto:kencinas@waknet.org)>; Phil DuPont

# EXHIBIT M

**From:** jwelch@archaeologysouthwest.org  
**Sent:** Friday, October 6, 2023 6:31 AM  
**To:** 'Barnes, Melanie G'  
**Cc:** 'Grant, Vern'; 'Peter Steere'; 'Howard Shanker'; 'Alex Bennett'; wdoelle@archaeologysouthwest.org; 'Stewart Koyiyumptewa - Hopi CPO'; 'Alex Binford-Walsh'; 'Kurt Dongoske - ZHHPO'; 'Kathryn Leonard'; rnelson@achp.gov; cdaniel@achp.gov; 'Bill Marzella'  
**Subject:** CORRECTED RE: Interest in Meeting Regarding SunZia PA Dispute Resolution

Dear State Director Barnes:

The trials of transition to a new computer and email server clearly exceeded my quality controls and resulted in the transmittal of an earlier draft of the intended message.

Below please find the final version of the message. I apologize to you and our other colleagues for this inconvenience.

jrjw

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Thank you for your September 27, 2023 email indicating BLM interest in resolving the dispute regarding the proposed SunZia Undertaking Programmatic Agreement (“PA”).

Representatives of the three disputants—San Carlos Apache Tribe, Tohono O’odham Nation, and Archaeology Southwest—met on September 28, 2023 to discuss this matter. The disputing parties delegated to Welch the duty to transmit to you, via this email, the following initial, eight-point “roadmap” for meaningful consultations toward dispute resolution.

1. We, the three disputing parties, will speak as one. Our shared intention is to consult and resolve this dispute as a collective. Please direct identical future correspondence regarding this dispute to all three disputing parties.
2. We take from the fact that the September 27 emails are from your office, rather than from BLM National Project Support Office staff, as a BLM acknowledgement of the preference expressed in our August 23 notice of dispute, to limit “BLM National Project Support Office staff from direct involvement with consultations pursuant to this dispute.” Please plan to consult at the BLM state directors’ level. Please notify us in your response to this email of BLM personnel likely to participate in the consultation.
3. Your email references an in-development “Historic Properties Treatment Plan to resolve non-physical adverse effects to historic properties, such as effects that are visual, indirect, or to tribal values.” We find no mention of a second HPTP in the PA. Indeed, PA part III. A. states (emphasis added), “BLM shall ensure that the Applicant prepares *an* HPTP for each state that will address the effects of the proposed Undertaking on historic properties during the Undertaking, including traditional cultural properties (TCPs).” Prior to an August 29 email from J. Childress, we find no BLM reference to or consultation with PA consulting parties regarding this proposed second HPTP. In light of this apparently unilateral BLM attempt to alter the process prescribed in the PA, you are respectfully advised that our dispute now includes BLM inattention to PA terms and stipulations III.A. and III.B. We view this action as inconsistent with the approved PA and as a coercive BLM abuse of assumed discretion. Please include in your email response to this email each of the following: (a) acknowledgement of the binding authority of the PA for matters within its scope; (b) recognition that the HPTP for historic properties in Arizona cannot be final because the PA contains no provisions for multiple PAs; (c) description of BLM’s proposed remedy to the BLM attempt to change the process prescribed in the PA and to prematurely finalize the HPTP; and (d) re-commitment to all PA provisions and stipulations.

4. In further reference to the second HPTP to resolve “non-physical adverse effects to historic properties, such as effects that are visual, indirect, or to tribal values,” we note that neither the National Historic Preservation Act (“NHPA”), nor its implementing regulations (36 CFR 800), nor the PA itself provide any basis for partitioning adverse effects to historic properties in terms of physical and non-physical. The BLM attempt to erect such a partition without prior consultation with the consulting parties appears to be an arbitrary and capricious attempt to manipulate the consultative terms of reference and to limit options for dispute resolution to those options favorable to the SunZia applicant. We advise BLM to desist in further unilateral attempts to marginalize or re-order, as BLM sees fit, types adverse effects, especially without due consultation. Again, BLM should comply with the PA and consult with the parties if BLM finds a need to amend the PA. Please include in your written response to this email a BLM re-commitment to the preparation of a revised or supplemental HPTP that comports with the PA.
5. We hope you will agree that the PA, together with the regulations implementing Section 106 of the NHPA, are the essential parameters and guides for dispute resolution. We invite BLM to replace its recently announced emphasis on preparing a second HPTP with the necessary re-dedication to the overdue completion of *the* fundamental step in the Section 106 process, that is, the identification of historic properties through “a reasonable and good faith effort to carry out appropriate identification efforts” (see 36 CFR 800.4(b)1). BLM is advised to complete the identification efforts prescribed at 800.4 and the assessment of potential adverse effects prescribed at 800.5. The results of those prerequisites are, of course, integral to the framing and substance of the efforts required by 800.6 to resolve potential adverse effects. In this regard, we again direct BLM attention to our varied notices and advisements, delivered to BLM in good faith since at least 2009, of the presence and significance of TCPs in the San Pedro Valley. BLM inattention to these venerable TCPs, to the mandates for consultations about these TCPs, and to the likelihood of Indigenous and non-Indigenous cultural landscapes in or comprising the San Pedro Valley, cannot reduce or cancel BLM regulatory and policy obligations. Please include in your written response to this email the BLM proposal to complete the processes prescribed at 800.4 and 800.5, steps that BLM could and should have completed prior to any BLM attempt to conclude the National Environmental Policy Act process. That proposal should, at a minimum, describe a thorough review of existing documentation concerning San Pedro Valley cultural resources—including but not limited to trails, springs, seeps, farming areas, habitats for keystone species like agave, acorn oaks, saguaro, and historic properties that may have religious and cultural significance to the Nation, the Tribe, and other federally recognized Tribes. Be advised, please, that large expanses of the San Pedro Valley likely qualify as historic properties comprised of Indigenous cultural landscapes. Be advised, also, that the BLM proposal for a second HPTP offers welcome recognition by BLM that the proposed SunZia undertaking would have adverse effects on TCPs and cultural landscapes.
6. In further accord with the PA and the regulations at 36 CRF 800, we advise BLM to prioritize the avoidance of potential adverse effects to historic properties, especially TCPs and cultural landscapes. BLM is advised to abandon its decade-plus attempts to ignore both TCPs and Tribes’ well-documented interests in protecting the San Pedro Valley. Please include in your response to this email a commitment to meeting BLM regulatory obligations to exhaust options for TCP avoidance before seeking to resolve adverse effects, per the terms of the proposed second HPTP or any other means.
7. As noted in 3, above, there cannot be a final HPTP until the regulatory steps prescribed at 800.4-5 and associated consultations are completed and the resulting information and perspective either employed to avoid adverse effects or integrated into the single HPTP required by the PA. For this reason, and because historic properties cannot be altered without a final HPTP, please include in your email response the affirmation that BLM will refrain from providing any notice to proceed or other similar authorization to the SunZia applicant/proponent for Arizona lands.

8. We request central participation by representative(s) of the President’s Advisory Council on Historic Preservation (ACHP) in communications to resolve this dispute. Representatives of other federally recognized Tribes, notably Zuni and Hopi, are most welcome to participate in such communications and, if we can agree on terms, in the requisite consultations. Please include the ACHP executive director, the Arizona SHPO, and any other Tribes who express interests in participation, in the BLM written communication that we see as the essential next step in resolving this dispute.

BLM actions to date in relation the proposed action’s NHPA compliance and consultations with the Tribe and Nation appear arbitrary, capricious, and an abuse of BLM discretion. We look forward to your response and to BLM re-commitments to the terms of the PA, to 36 CFR 800, and to BLM policies regarding consultation and cooperation with federally recognized tribes. These and the eight points noted above are the bases for dispute resolution.

Respectfully submitted on behalf of the TO Nation, SCA Tribe, and Archaeology SW.

---

**From:** Barnes, Melanie G <[MGBarnes@blm.gov](mailto:MGBarnes@blm.gov)>  
**Sent:** Wednesday, September 27, 2023 2:17 PM  
**To:** [wdoelle@archaeologysouthwest.org](mailto:wdoelle@archaeologysouthwest.org); [JWelch@archaeologysouthwest.org](mailto:JWelch@archaeologysouthwest.org)  
**Subject:** Interest in Meeting Regarding SunZia PA Dispute Resolution

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## Melanie G. Barnes, Ph.D.

New Mexico State Director  
Bureau of Land Management

Phone: 505-954-2222 Email: [mgbarnes@blm.gov](mailto:mgbarnes@blm.gov)

301 Dinosaur Trail, Santa Fe, NM 87508

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# EXHIBIT N



**Hon. Terry Rambler  
Chairman, San Carlos  
Apache Tribe**



**Hon. Verlon Jose  
Chairman, Tohono  
O'odham Nation**

*Together We Are Stronger*

December 8, 2023

**Via E-mail & U.S. Postal Service**

The Honorable Jim O'Connor  
Chair  
Members of the Commission  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

E-M: [OConnor-Web@azcc.gov](mailto:OConnor-Web@azcc.gov)  
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[Myers-Web@azcc.gov](mailto:Myers-Web@azcc.gov)

**Re: ACC Docket No. L-00000YY-15-0318-00171**

Dear Chairman O'Connor and Commission Members:

On behalf of the more than 50,000 combined members of the San Carlos Apache Tribe ("Tribe") and the Tohono O'odham Nation ("Nation"), we provide our response to the December 5, 2023 Notice of Filing Regarding Historic Properties Treatment Plan for the SunZia Transmission Project ("SunZia"). That filing, as required by Condition 12 of the Certificate of Environmental Compatibility and approved by the Commission in Decision No. 75464 and later amended in Decision No. 78769 ("CEC"), appears to be out of order.



## Arizona Corporation Commissioners

Re: SunZia HPTP and Cultural Landscape Study Concerns

December 8, 2023

Page 2 of 3

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Our Tribes, joined by the Zuni Tribe, Hopi Tribe, and Archaeology Southwest, filed a formal Notice of Dispute with the Bureau of Land Management (“BLM”) and the President’s Advisory Council on Historic Preservation (“ACHP”) on August 4, 2023. The Notice was made pursuant to the terms of the SunZia Programmatic Agreement (“PA”) for BLM’s failure to comply with Section 106 of the National Historic Preservation Act (“NHPA”). Then, on September 29, 2023, BLM then adopted a historic property treatment plan (“HPTP”).

Please be advised that the HPTP filed with the Commission per CEC Condition 12 on December 5 stands premature and inconsistent with the terms of the PA and NHPA. The ACHP has similarly advised BLM of serious flaws in the HPTP and NHPA compliance process. BLM has acknowledged its duty to consult with the disputing parties and ACHP to resolve the dispute but has yet to do so. *See also* the Tohono O’odham Nation’s letter to the Commission of October 13, 2015 (Commission Document 0000166527 in Docket L-00000YY-15-0318-00171). Our view is that the HPTP, as filed, is illegitimate and incomplete.

It further appears that SunZia has violated Condition 27 of the CEC. Condition 27 stipulates, in part, that a “cultural landscape study shall be conducted to fully evaluate the impacts of the Project on the cultural landscape prior to the commencement of construction, pursuant to and as required by the PA.” The information available to us indicates that that no such cultural landscape study has been initiated. Furthermore, our Notice of Dispute came only *after* BLM refused to complete the cultural landscape study required in CEC Condition 27.

BLM and the SunZia have always had unfettered access to ample information required to substantiate the San Pedro Valley as a cultural landscape and to complete the required cultural landscape study. Peer-reviewed literature, technical reports and direct advisements from the affected Tribes clearly show at least twelve millennia of tribal settlement of the San Pedro Valley. A cultural landscape study remains undone, yet such a study is only method available to bring this unique and fascinating environmental co-evolution into the foreground of project planning. The study will place the archaeological surveys into geographical and cultural contexts. The study is required to help remedy the significant and irrevocable alterations SunZia is making to our lands. For your reference, the U.S. National Park Service guidance for use by BLM and SunZia is available at: <https://www.nps.gov/subjects/culturallandscapes/planning.htm>.

Finally, we note that CEC Condition 25 requires any new assignee of the CEC to assume all responsibilities and conditions in the CEC, as required by statute.

In conclusion, CEC Conditions 12 and 27 require compliance prior to construction, we request that the Commission instruct the Applicant to cease construction until evidence of full compliance is provided. For these reasons, we respectfully request that ACC withdraw its Decisions on the SunZia project and demand compliance with both CEC Condition 12 and CEC Condition 27, as well as with Section 106 of the NHPA.

**Arizona Corporation Commissioners**

*Re: SunZia HPTP and Cultural Landscape Study Concerns*

December 8, 2023

Page 3 of 3

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Thank you in advance for reviewing and acting upon our concerns. We look forward to your timely response.

Sincerely,

TOHONO O'ODHAM NATION



Verlon Jose, Chairman

SAN CARLOS APACHE TRIBE



Terry Rambler, Chairman

Cc: Kathryn Leonard, Arizona State Historic Preservation Officer, [kleonard@azstateparks.gov](mailto:kleonard@azstateparks.gov)  
Patrick Lyons, Director, Arizona State Museum, [plyons@arizona.edu](mailto:plyons@arizona.edu)  
Hon. Stephen Roe Lewis, Governor, Gila River Indian Community, P. O. Box 97, Sacaton, AZ 85147  
Barnaby Lewis, THPO, Gila River Indian Community, [Barnaby.Lewis@gric.nsn.us](mailto:Barnaby.Lewis@gric.nsn.us)  
Hon. Timothy L. Nuvangyaoma, Chairman, Hopi Tribe, [TNUvangyaoma@hopi.nsn.us](mailto:TNUvangyaoma@hopi.nsn.us)  
Stewart Koyiyumptewa, Hopi Tribe Cultural Preservation Officer, [SKoyiyumptewa@hopi.nsn.us](mailto:SKoyiyumptewa@hopi.nsn.us)  
Hon. Gabe Aguilar, President, Mescalero Apache Tribe, [gaguilar@mescaleroapachetribe.com](mailto:gaguilar@mescaleroapachetribe.com)  
Holly Houghton, THPO, Mescalero Apache Tribe, [holly@mathpo.org](mailto:holly@mathpo.org)  
National Trust for Historic Preservation, Elizabeth Merritt, [emerritt@savingplaces.org](mailto:emerritt@savingplaces.org)  
Hon. Arden Kucate, Governor, Pueblo of Zuni, [arden.kucate@ashiwi.org](mailto:arden.kucate@ashiwi.org)  
Kurt Dongoske, THPO, Pueblo of Zuni, [kdongoske@cableone.net](mailto:kdongoske@cableone.net)  
Octavius Seowtewa, ZCRAT, Pueblo of Zuni, [oct.seowtewa@gmail.com](mailto:oct.seowtewa@gmail.com)  
Peter Steere, THPO, Tohono O'odham Nation, [peter.steere@tonation-nsn.gov](mailto:peter.steere@tonation-nsn.gov)  
Bill Doelle, Archaeology Southwest, [wdoelle@archaeologysouthwest.org](mailto:wdoelle@archaeologysouthwest.org)  
Vernelda Grant, THPO, San Carlos Apache Tribe, [apachevern@yahoo.com](mailto:apachevern@yahoo.com)  
A.B. Ritchie, AG-DOJ, San Carlos Apache Tribe, [Alex.Ritchie@scat-nsn.gov](mailto:Alex.Ritchie@scat-nsn.gov)

# EXHIBIT O

ORIGINAL



0000210590



SunZia Transmission, LLC  
1088 Sansome Street  
San Francisco, CA 94111  
T +1 415 283 4000  
F +1 415 362 7900  
www.patternenergy.com

Docket No. L-00000YY-15-0318-00171

January 31, 2024

Ranelle Paladino and Briton Baxter  
Co-Directors  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Arizona Corporation Commission

DOCKETED

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Subject: SunZia Transmission, LLC  
2024 Letter of Self-Certification for the SunZia Southwest Transmission  
Project; Arizona Corporation Commission Decision Nos. 75464 and 78769

Dear Directors Paladino and Baxter:

Pursuant to Condition No. 21 of Arizona Corporation Commission's ("ACC" or "Commission") Decision No. 75464 and Decision No. 78769, SunZia Transmission, LLC ("SunZia") submits this Letter of Self-Certification ("Letter") for compliance activities regarding the SunZia Southwest Transmission Project ("SunZia Project" or "Project") that occurred during 2023 and through the date of this letter.

**BACKGROUND**

On February 22, 2016, the Commission issued Decision No. 75464, approving a Certificate of Environmental Compatibility for the SunZia Project. On November 21, 2022, the Commission issued Decision No. 78769, approving amendments to CEC 171. Among these amendments was the bifurcation of CEC 171 into CEC 171-A, which applies to the transmission line currently under construction by SunZia ("Line 1") and 171-B, which applies to a transmission line under

**Condition No. 10**

*If human remains and/or funerary objects are encountered on private land during the course of any ground-disturbing activities related to the construction of the Project, Applicant shall cease work on the affected area of the Project and notify the Director of the ASM as required by A.R.S. § 41-865.*

During construction, SunZia will work closely with the ASM and SHPO regarding such remains and/or funerary objects that may be encountered. Per the terms of the SunZia PA, the final HPTP includes a Monitoring and Discovery Plan. This plan will be implemented if SunZia encounters unexpected excavation of remains and/or funerary objects.

**Condition No. 11**

*Applicant will comply with the HPTP to be developed pursuant to the Programmatic Agreement ("PA") entered into on December 17, 2014, to ensure that pre-construction archaeological testing and monitoring of all ground clearing and disturbing construction activities that may affect historical or cultural sites that are listed, or eligible for listing, on the Arizona Register of Historic Places ("Register") are conducted in full compliance with Arizona and federal law. In the event a listed or listing – eligible site is discovered, the Applicant will ensure that approved mitigation measures are implemented according to the PA. Applicant shall coordinate and share results of any archaeological work and findings with the appropriate tribes, according to the PA.*

SunZia will continue to comply with the PA, and will comply with the HPTP consistent with the requirements of this condition.

**Condition No. 12**

*Before construction of the Project may commence, the Applicant shall file a copy of each of the following documents with the Commission's Docket Control: (a) PA; (b) HPTP; (c) PRMP; (d) POD; (e) ROD; and (f) APP, or equivalent, including any amendments to any of such documents subsequent to the granting of this Certificate. Further, in addition to compliance with the conditions set forth in this Certificate, the Applicant shall comply with the provisions of these documents as applicable to the Arizona portion of the Project. Notification of such filing with Docket Control shall be made to the counties of Greenlee, Graham, Cochise, Pima, and Pinal, City of Coolidge, SHPO, AGFD, all parties to this Docket, and all parties that made a limited appearance in this Docket.*

On July 10, 2023, pursuant to Condition No. 12, SunZia filed the ROD, Amended PA, the final POD, and PRMP in this docket. The Arizona HPTP for Line 1 was finalized during 2023 and notice of provision of the confidential document being provided to staff was filed on December 5, 2023.

### **Condition No. 13**

*“Within one hundred twenty (120) days of the Commission’s decision approving this Certificate, the Applicant will post signs in or near public rights-of-way giving notice of the Project corridor to the extent authorized by law. The Applicant shall place such signs in prominent locations at reasonable intervals (no more than one-half mile apart, subject to obtaining permission from the landowner) so that public is notified along the full length of the Project until the transmission structures are constructed. To the extent practicable, within forty-five (45) days of securing easements or rights-of-way for the Project, subject to the landowner’s approval, the Applicant shall erect and maintain signs (no more than one-half mile apart) providing public notice that the property is the site of a future transmission line or substation. Such signage shall be no smaller than a normal roadway sign. The signs shall advise:*

- a) That the site has been approved for the construction of Project facilities;*
- b) The expected date of completion of the Project facilities;*
- c) A phone number for public information regarding the Project;*
- d) The name of the Project;*
- e) The name of the Applicant; and*
- f) The website of the Project.*

*Such signs shall be inspected at least once annually and if necessary be repaired or replaced.”*

SunZia continues to inspect the installed signs and repair or replace them as needed. During the February 2023 sign inspection, 3 signs were repaired. During the March 2023 sign inspection, 2 signs were repaired. During the July 2023 sign inspection, 3 signs were repaired. Additional sign inspections were completed in December 2023 and 4 signs were repaired.

### **Condition No. 14**

*“Within one hundred twenty (120) days of the Commission’s decision granting this Certificate, the Applicant shall make good faith efforts to commence discussions with private landowners on whose property the Project corridor is located to identify the specific location for the Project’s right-of-way and placement of poles. A description of the good faith efforts and discussions shall be included in the annual compliance-certification letter.”*



SunZia acknowledges the requirements of assumption of responsibilities arising from this CEC that must be assumed by any recipient of transfer or assignment of this CEC by SunZia or any successor to SunZia itself, as set forth in this condition.

**Condition No. 26**

*The POD will identify and require the necessary steps to avoid the creation of new roads, including the employment of aerial construction for the setting of transmission structures and conductors within the San Pedro River Valley in the eight-mile area that includes Paige Canyon, as depicted in Attachment B hereto, subject to the approval of the landowner, ASLD. In so doing, the Applicant will work with ASLD in determining how, when, and where the use of helicopters can assist in mitigating the impact of construction activities, setting transmission structures and conductors, including tower placement, stringing, tensioning, and operation and maintenance of any transmission line(s) on biological and cultural resources in the remainder of the San Pedro River Valley in which the project will be built. All of the above shall take into account, where relevant, the potential air wash effect of and/or tribal sensitivity to the use of helicopters near cultural sites. Nothing in the foregoing precludes the Applicant from considering or utilizing aerial construction along other portions of the Route.*

The POD has been finalized and it includes the information needed to comply with Condition No. 26 (see also Condition No. 12).

**Condition No. 27**

*“A Class III cultural resource survey and cultural landscape study shall be conducted to fully evaluate the impacts of the Project on the cultural landscape prior to the commencement of construction, pursuant to and as required by the PA.”*

Class III cultural resources surveys were completed for the Arizona portion of the project and reported on in past self-certification letters. The Class III pedestrian cultural resource survey also included a landscape evaluation that incorporated Tohono O’odham tribal members as participants in the survey to assist in identifying and documenting ethnographically important elements of the cultural and natural landscape. The results were reported in the cultural inventory reports. In addition, a landscape-scale Visual Effects Assessment was completed to evaluate indirect effects to cultural sites within 5 miles of the project in Arizona and New Mexico, along with a Historic Properties Treatment Plan to determine how any impacts would be avoided or mitigated. As part of the consultation process BLM requested information regarding identification/scale of cultural resources that could justify the development of a separate, new

landscape scale cultural resources study, however BLM has indicated that it received inadequate information to justify such a study in response to their request.

**Condition No. 28**

*The Route will be micro-sited to minimize paralleling Paige Canyon through coordination with and subject to approval by ASLD. To accommodate this effort, the corridor maps submitted herewith reflect a wider corridor to allow the Applicant maximum micro-siting capabilities.*

The requirements of this condition are incorporated in the final POD.

**Condition No. 29**

*“Upon commencement by the Applicant of activities related to the initiation of the POD, the Applicant will invite, in writing, the following persons to coordinate with the Applicant on the development of the Arizona portion of the POD prior to submission to the BLM (here in after referred to as the “invited stakeholders”):*

- *All parties who intervened in the SunZia Certificate Process.*
  - *The Pro Se interveners may either respond or participate in their individual capacity, or in a representative capacity on behalf of an organization which they represent.*
- *All agencies which were Arizona Cooperating Agencies during the NEPA Process for the Project.*
- *All counties through which the Project traverses.*
- *The nature Conservancy.*
- *All cities and towns within five (5) miles of the centerline of the Project.*

*Any person invited by the Applicant to coordinate in the development of the Arizona portion of the POD who wishes to participate in such coordination must respond to the Applicant, in writing, accepting the incitation, within thirty (30) days from the date the Applicant mailed the invitation. For ease of reference, any person accepting the incitation will be hereinafter referred to as “participating stakeholder.” Any person invited by the Applicant to coordinate in the development of Arizona portion of the POD who does not respond to the Applicant, in writing, accepting the incitation within thirty (30) days from the date the Applicant mailed the incitation shall have no further right or ability to coordinate with the Applicant in the development of Arizona portion of the POD.*