



L O G A N S I M P S O N

## Memorandum

To: Kristin Bowen, Lead Archaeologist, Western Colorado Area Office, Bureau of Reclamation  
From: Erick Laurila, Principal, Cultural Resources, Logan Simpson  
Date: January 25, 2018  
Re: Navajo-Gallup Water Supply Project, Cultural Resources Clearance Recommendation for Reach 11

Stipulation XII of The Navajo-Gallup Water Supply Project (NGWSP) Programmatic Agreement (PA) articulates that a Notice to Proceed for construction on any given segment of the project may proceed only after the following conditions have been met:

- Required cultural resources inventories outlined in Stipulation II of the PA have been completed for the construction segment including Class III archaeological survey of the area of potential effects (APE) and consultation to identify Traditional Cultural Properties (TCPs); and
- Consultation with PA parties on the National Register of Historic Places (NRHP) eligibility of historic properties, finding of effect, and adequate completion of mitigation activities to resolve adverse effects to historic properties has occurred.

The following memorandum serves as documentation of the Bureau of Reclamation's (Reclamation) compliance with the stipulations of the NGWSP PA.

### Reach 11 Area of Potential Effects

Reach 11 is located on the San Juan Lateral on Navajo Nation land between Twin Lakes and Navajo Route 9. The APE for the Reach 11 pipeline is defined as a 5.1-mile-long by 400-foot-wide (122-meter-wide) linear corridor. The pipeline right-of-way (ROW) is 150 feet wide (45.72 meters wide), 75 feet wide (22.86 meters wide) on either side of the pipeline centerline. In some areas in the vicinity of NRHP-eligible sites, the ROW was restricted to 50 to 100 feet wide. The pipeline APE encompassed 247.27 survey acres.

In addition to the linear pipeline APE, there was also a survey conducted for Pumping Plant 7, which is considered part of Reach 11. The APE for Pumping Plant 7 consists of three areas that are located at the southern end of Reach 11; these areas totaled approximately 20 acres of land. Pumping Plant 7 is located north of Navajo Service Road 9 on both sides of the NGWSP pipeline APE and the El Paso Natural Gas pipelines.

### Class III Archaeological Inventory

The APE for the Reach 11 pipeline and Pumping Plant 7 was surveyed by PaleoWest Archaeology (PaleoWest) and 21 archaeological and historical sites, 2 TCPs, 2 Jishchaa, 9 in-use sites, and 20 isolated occurrences were identified (Chuiyka 2015; Breternitz and Chuiyka 2016). PaleoWest recommended eight

sites eligible for inclusion in the NRHP under either Criterion D or Criteria B and D and five sites not eligible for listing in the NRHP. Eight sites needed more data to assess their NRHP eligibility. The 21 sites are listed in the table below along with the management recommendations. Reclamation agreed with PaleoWest's recommendations and determined the sites are eligible, not eligible, or needing more data as outlined in letters to consulting parties dated April 25, 2016 (re: Reaches 9-11) and May 23, 2016 (re: Pumping Plant 7 along Reach 11), and September 7, 2017 (re: Pumping Plant 7 project effect). Reclamation attempted to avoid as many identified cultural resources as possible and realigned the ROW around a majority of the sites. The resultant ROW crossed four sites: NM-Q-18-368, NM-Q-18-369, NM-Q-18-371, and NM-Q-19-131 (Note: These sites are shaded light gray in the Table).

Site Number	Description	Land Status	NRHP Status	Management Recommendations
NM-Q-19-129/ LA6448	Prehistoric Non-structural	Navajo Nation	Eligible (D)	Avoided
NM-Q-19-130/ LA80433	Prehistoric Structural	Navajo Nation	Eligible (D)	Avoided
NM-Q-18-362/ LA80434	Prehistoric Structural	Navajo Nation	Eligible (D)	Avoided
NM-Q-18-363/ R11-01	Historic/Modern Non-structural	Navajo Nation	Not eligible	Avoided
NM-Q-14-145/ R11-02	Prehistoric Non-structural	Navajo Nation	Need data	Avoided
NM-Q-18-364/ R11-03	Historic/Modern Structural	Navajo Nation	Not eligible	Avoided
NM-Q-14-146/ R11-04	Prehistoric Non-structural Modern Non-structural	Navajo Nation	Need data	Avoided
NM-Q-19-131/ R11-06	Prehistoric Non-structural	Navajo Nation	Need data; after mitigation, Eligible	Tested and Phase II data recovery completed within ROW; Fence ROW during construction
NM-Q-18-365/ R11-07	Historic Structural	Navajo Nation	Not eligible	Avoided
NM-Q-19-132/ R11-12	Prehistoric Non-structural	Navajo Nation	Need data	Avoided
NM-Q-18-366/ R11-17	Prehistoric Structural Historic/Modern Structural	Navajo Nation	Need data	Avoided
NM-Q-18-367/ R11-21	Historic Structural	Navajo Nation	Eligible (D)	Avoided
NM-Q-18-368/ R11-23	Prehistoric Structural	Navajo Nation	Eligible (D)	Tested – no substantial subsurface material; Fence ROW and monitoring recommended during construction
NM-Q-18-369/ R11-24	Prehistoric Structural Historic/Modern Structural	Navajo Nation	Eligible (B and D)	Tested and Phase II data recovery completed; Fence ROW during construction
NM-Q-18-370/ R11-25	Prehistoric Structural	Navajo Nation	Eligible (D)	Avoided
NM-Q-18-371/ R11-26	Prehistoric Structural Historic/Modern Structural	Navajo Nation	Eligible (B and D)	Tested – no substantial subsurface material; Fence ROW and monitoring recommended during construction
NM-Q-18-372/ R11-28	Historic/Modern Structural	Navajo Nation	Not eligible	Avoided
NM-Q-14-96/ PP7_04	Prehistoric Non-structural	Navajo Nation	Need data	Avoided
NM-Q-14-97/ PP7_03	Prehistoric Non-structural	Navajo Nation	Need data	Avoided
NM-Q-14-98/ PP7_02	Historic Non-structural	Navajo Nation	Not eligible	Avoided
NM-Q-19-128/ PP7_01	Prehistoric Non-structural	Navajo Nation	Need data	Avoided

Phase I testing, consisting of surface collection, hand-excavated units, and backhoe trenching, occurred at the four sites. Testing at sites NM-Q-18-368 and NM-Q-18-371 did not result in substantial subsurface material. Testing at the other two sites (NM-Q-18-369 and NM-Q-19-131) revealed buried cultural deposits that could provide information to address questions within the approved NGWSP research design (Potter et al. 2013), and as such further Phase II data recovery work was recommended at these sites. A report, summarizing the testing results and including a data recovery plan, was submitted to consulting parties on October 5, 2017 (Miller et al. 2017). Following concurrence of the data recovery fieldwork plan, backhoe stripping and feature excavation focused on buried prehistoric deposits found during Phase I testing. Data recovery revealed limited buried deposits at NM-Q-18-369 and more features (e.g., buried pit structure) than expected at NM-Q-19-131 in the Reach 11 ROW. The End of Fieldwork Data Recovery report (Miller and Potter 2017) and a letter stipulating that the ROW be fenced along the four sites described in the report was submitted to consulting parties on November 29, 2017.

A geotechnical testing proposal that included areas in Reach 11 was submitted for consultation on December 21, 2017. The consultation letter stated that all cultural resources in Reach 11 were being avoided by 250-300 feet and that the test pit location would not require an archaeological monitor. The consultation allowed for the geologist to make shift testing locations under the guidance of an archaeological monitor that will ensure avoidance by 50 feet or more of all eligible and needs data sites. Navajo Nation concurred with geotechnical testing on December 22, 2017.

### **Traditional Cultural Property Identification**

Reclamation consulted with the Hopi Tribe, the Hualapai Tribe, the Jicarilla Apache Nation, the Navajo Nation, the Ohkay Owingeh, the Pueblo of Acoma, the Pueblo of Jemez, the Pueblo of Pojoaque, the Pueblo of Santa Ana, the Pueblo of Santa Clara, the Pueblo of Zia, the Pueblo of Zuni, the Southern Ute Indian Tribe, and the Ute Mountain Ute Tribe on the existence of any cultural resources of tribal religious or cultural significance or TCPs within the broader NGWSP project area (letters, dated April 1, 2013 and August 6, 2013).

Ethnographic field work was completed in conjunction with the cultural resources inventory; the fieldwork was completed by Dinetahdoo Cultural Resources Management, LLC (DCRM) (Kelley and Francis 2014). The results of DCRM's fieldwork is summarized in the inventory report by Chuipka (2015); one TCP was recorded within the Reach 11 APE. The TCP is eligible for inclusion in the NRHP and will be avoided per the Sampling Plan for the San Juan Lateral (Chuiipka et al 2017).

Stipulation II(3)(b) of the NGWSP PA indicates that Reclamation will assist each concurring tribal party with conducting a study of the APE to identify TCPs; however, although some studies have occurred, not all TCP studies will be completed in their entirety prior to scheduled construction of Reach 11. In order to account for this, Reclamation engaged in additional consultation with all the consulting tribes to identify TCPs and sacred sites and offered all the consulting tribes opportunities to visit the APE to assist the tribes with reaching decisions about whether any TCPs are present in the APE. These additional consultation efforts, which included field visits, were intended to provide tribes with the opportunity to provide Reclamation with the information regarding the presence of any TCPs in the Reach 11 APE.

The Pueblo of Acoma conducted rapid ethnographic assessments (REA) in the Reach 11 APE during the summer of 2017; a report of the results of the REAs is currently in preparation. The Pueblo of Zuni conducted site visits in the Reach 11 APE. Their visits were conducted in August 2017 as part of their funded TCP study.

Survey findings, alignment location, sampling strategies, (alternative) mitigation plan, consultation, and concerns were discussed during NGWSP PA Workgroup meetings held on September 10, 2015 (Albuquerque), January 21, 2016 (Bloomfield), March 9, 2016 (Santa Fe), August 12, 2016 (Gallup), April 18-19, 2017 (Farmington), July 19-20, 2017 (Gallup). An invitation was extended by Reclamation during the April 19, 2017 PA Workgroup Meeting (Farmington) to tribes to sign up for field visits to the APE if they desired; the

Hopi Tribe, the Navajo Nation, and the pueblos of Acoma and Jemez signed up for site visits. The Pueblo of Santa Clara expressed interest in field visits several days after the meeting.

The additional consultation efforts resulted in minimizing effects to significant features within a group of sites near Gossip Hill. These sites could not be completely avoided by construction activities for a variety of reasons.

## **Consultation on NRHP eligibility, Finding of Effect, and Mitigation for Reach 11**

### **NRHP Eligibility and Finding of Effect**

In response to requests made by participants during the January 2015 PA Workgroup Meeting, Reclamation sent draft reports of the cultural resource inventory for this and other reaches on May 29, 2015 to the Hopi Tribe, the Hualapai Tribe, the Jicarilla Apache Nation, the Navajo Nation, the Pueblo of Pojoaque, the Pueblo of Santa Ana, the Pueblo of Santa Clara, the Pueblo of Zia, the Pueblo of Zuni, and the Bureau of Indian Affairs (BIA). The drafts contained raw data with preliminary recommendations for site eligibility. The NMHPD responded with a letter stating they will concur with Reach 11 site eligibility determinations made by the Navajo Nation Tribal Historic Preservation Officer (THPO) (letter dated June 25, 2015).

Reclamation initiated consultation with the BIA, Bureau of Land Management (BLM), the New Mexico Historic Preservation Division (NMHPD), the New Mexico State Land Office, the Hopi Tribe, the Hualapai Tribe, the Jicarilla Apache Tribe, the Navajo Nation, the Ohkay Owingeh, the Pueblo of Acoma, the Pueblo of Jemez, the Pueblo of Pojoaque, the Pueblo of Santa Ana, the Pueblo of Santa Clara, the Pueblo of Zia, the Pueblo of Zuni, the Southern Ute Indian Tribe, and the Ute Mountain Ute Tribe (consulting parties) on the NRHP-eligibility of the 17 sites (i.e., NM-Q-19-129 to -132; NM-Q-18-362 to -372; and NM-Q-14-145 and -146) identified during the Reach 11 inventory via letters dated April 25, 2016 (see Table above). The NMHPD responded with a letter stating they are interested in the Navajo Nation THPO's determinations and will concur with Reach 11 site eligibility determinations made by the Navajo Nation THPO (letter dated May 30, 2016). The Pueblo of Santa Ana concurred with the recommendations via email dated June 1, 2016. The Hopi Tribe responded with letters dated May 9, 2016 and November 1, 2016 that they reviewed the report and appreciated that they will be consulted regarding the effects on cultural resources. The letter dated November 1, 2016 by the Hopi Tribe stated their interest in continued consultation about the sampling strategy and treatment plan for sites directly affected by construction along Reach 11. A final draft of the Class III inventory and Ethnographic Summary was distributed to the consulting parties on June 12, 2017.

Reclamation continued consultation via letter dated May 23, 2016 with the consulting parties on the NRHP-eligibility of four sites (i.e., NM-Q-14-96 to -98 and NM-Q-19-128) identified during an addendum survey of a location for a pumping plant (i.e., Pumping Plant 7) (see Table above). The Hopi Tribe responded with a letter dated June 2, 2016 that they reviewed the report and appreciated continued consultation with effects on the cultural resources. The NMHPD responded with a letter stating they are interested in the Navajo Nation THPO's determinations and will concur with Reach 11 site eligibility determinations made by the Navajo Nation THPO (letter dated June 6, 2016). The Pueblo of Santa Ana concurred with the recommendations via email dated June 1, 2016. The BLM responded via email dated June 14, 2016 that since there is no BLM land involved, the BLM had no comments about the report. Reclamation sent a letter dated September 7, 2017 that recommended a "No Historic Properties Affect" effect determination for the Pumping Plant 7 location. The Hopi Tribe concurred with the determination for Pumping Plant 7 on September 18, 2017. The Pueblo of Santa Ana concurred on September 18, 2017 as well.

The Reach 11 Testing Phase Results and Data Recovery Plan report was distributed to the consulting parties on October 5, 2017. The Hopi Tribe stated in a letter dated October 16, 2017 that they had reviewed the report and looked forward to continued consultation. The Data Recovery End of Fieldwork report was distributed to consulting parties on November 29, 2017. The Hopi Tribe responded via letter dated December 14, 2017 that

they reviewed the report and looked forward to receipt of the data recovery report for sites NM-Q-18-369 and NM-Q-19-131.

Reclamation continued consultation with the Navajo Nation via a letter dated December 21, 2017 for geotechnical testing consisting of test pits (10 feet long by 3 feet wide by 12 feet deep). All the tests will occur beyond 50 feet from the sites. The Navajo Nation concurred with the geotechnical no effect determination on December 22, 2017.

### **Construction Mitigation Measures and Contractor Stipulations**

Archaeological testing and data recovery have occurred along Reach 11 and no further mitigation measures (i.e., archaeological testing or data recovery) are recommended as necessary for construction to proceed along the reach. **NTP for construction is contingent on avoidance of all NRHP-eligible properties and all sites with the eligibility noted as – needs data. Fencing to avoid any inadvertent impacts will be required at four sites as follows:**

- **NM-Q-19-131 will require fencing along the eastern side of the 50-foot ROW;**
- **NM-Q-18-368 will require fencing along the southeastern side of the 150-foot ROW;**
- **NM-Q-18-369 will require fencing on both sides of the 50-foot ROW; and**
- **NM-Q-18-371 will require fencing on both sides of the 80-foot-wide ROW.**

**Reclamation shall coordinate with a cultural resource consultant who holds a Navajo Nation Cultural Resources Protection Act (CRPA) Class C - Type I permit to conduct archaeological monitoring. The consultant will ensure that avoidance measures are implemented prior to construction.**

**All monitoring and assessment of any discoveries on Navajo Nation land will be consistent with standards established by the Navajo Nation Historic Preservation Department (NNHPD), the CRPA permit, and monitoring plan to be submitted. If there are any discoveries of cultural resources during construction on Navajo Nation land, then the procedures within the submitted and approved monitoring plan shall be implemented. If any human remains, funerary objects, sacred objects, and objects of cultural patrimony are inadvertently encountered during construction on Navajo Nation land, then protocols established within the *Navajo Nation Policy for the Protection of Jishchaa'* will be followed.**

### **Recommendation**

Based upon Logan Simpson's review of the inventory reports and record of consultation conducted for Reach 11, it is our opinion that Reclamation is in compliance with the terms of the NGWSP PA. Although, TCP identification efforts within Stipulation II of the NGWSP PA were not completed in their entirety, Logan Simpson also finds that Reclamation has made a reasonable and good faith effort to identify TCPs and sacred sites in the Reach 11 APE through alternative processes from those stipulated within the PA by following the guidance provided within Executive Orders 13007 and 13175 and NPS Bulletin Number 38, *Guidelines for the Identification and Evaluation of Traditional Cultural Properties*. Logan Simpson recommends Cultural Resources Clearance be issued for Reach 11.

**References:**

Breternitz, Cory D., and Jason Chuipka

2016 *The Navajo-Gallup Water Supply Project Class III Cultural Resources Inventory for Pumping Plant 7 along Reach 11 of the San Juan Lateral, Navajo Nation and McKinley County, New Mexico.* PaleoWest Technical Report No. 16-50. PaleoWest Archaeology, Farmington.

Chuiipka, Jason

2015 *The Navajo-Gallup Water Supply Project: Class III Inventory and Ethnographic Summary for the San Juan Lateral, Volume II: Reaches 9-11, Navajo Nation and McKinley County, New Mexico.* PaleoWest Technical Report No. 15-15. PaleoWest Archaeology, Farmington.

Chuiipka, Jason, James Potter, Kirk Anderson, and Dennis Gilpin

2017 *The Navajo-Gallup Water Supply Project Cultural Resource Summary and Sampling Plan for the San Juan Lateral, Navajo Nation and McKinley and San Juan Counties, New Mexico.* PaleoWest Technical Report No. 17-2. PaleoWest Archaeology, Farmington.

Kelley, Klara, and Harris Francis

2014 *Navajo-Gallup Water Supply Project Traditional Cultural Resources Inventory and Assessment, Reach 11.* DCRM 2013-59.3. Report submitted to PaleoWest Archaeology, Farmington.

Miller, Kye, and James Potter

2017 *The Navajo-Gallup Water Supply Project: End of Fieldwork Report for Reach 11 Data Recovery Investigations, McKinley County and Navajo Nation, New Mexico.* PaleoWest Technical Report No. 17-389. PaleoWest Archaeology, Farmington.

Miller, Kye, James Potter, and Steven Gilbert

2017 *The Navajo-Gallup Water Supply Project: Reach 11 Testing Phase Results and Data Recovery Plan, McKinley County and Navajo Nation, New Mexico.* PaleoWest Technical Report No. 17-335. PaleoWest Archaeology, Farmington.

Potter, James M., Dennis Gilpin, and Jason P. Chuipka

2013 *Navajo-Gallup Water Supply Project Archaeological Research and Sampling Design.* PaleoWest Technical Report No. 12-06. PaleoWest Archaeology, Farmington.