

**Environmental Impact Statement
Environmental Review Agreement Template
September, 2009**

The following are terms and conditions typically used by Western in an “Environmental Review Agreement” for an Environmental Impact Statement (EIS). These clauses will be used in addition to those required under Western’s Open Access Transmission Tariff (OATT), and specifically Attachment J to the OATT.

As indicated below, not all clauses are applicable to each project and other clauses may require a choice of the appropriate clause (e.g., A or B). Western has attempted to provide a comprehensive example of the provisions required in an Environmental Review Agreement. The following is a template and may be modified based on the unique needs of a specific project.

In addition, Western is required to comply with federal law, including the National Environmental Policy Act (NEPA), and, if Western determines additional specific steps and/or provisions are required that are not addressed in this template, Western may add those provisions necessary to enable Western to comply with federal law. The scoping process also could result in a determination that a higher level of environmental review is required and, in that situation, Western will need to re-negotiate the terms of the Environmental Review Agreement. Finally, additional costs and delay may occur if the Customer proposes changes to the project after the initiation of the environmental review.

Further information on Western’s environmental compliance and its responsibility under NEPA can be found in Western’s “General Request for Interconnection.”

1. Western, at the Customer’s sole expense, shall:

- 1.1 **A.** Provide a statement of work that the customer shall use to issue a request for proposals for an environmental contractor for the preparation of the EIS and related studies. The customer shall be responsible for all costs associated with procurement, and preparation of the EIS and Administrative Record in accordance with the Scope of work, or subsequent change orders.¹

OR

- B.** Procure an environmental contractor for the preparation of the EIS and related studies in accordance with the scope of work and subsequent change orders. The customer shall be responsible for all costs associated with procurement, and preparation of the EIS and Administrative Record in accordance with the Scope of work, or subsequent change orders

- 1.2 Western shall select the environmental contractor under 1.1.

¹ While the Customer may have an existing relationship with an environmental contractor, an independent contractor must still be selected by Western for preparation of the EIS.

- 1.3 Provide all technical direction to environmental contractor, as selected under 1.1, in accordance with 40 CFR 1506.5(c), including participation in the preparation of the EIS and independent evaluation of the EIS prior to its approval and shall take responsibility for scope and content of the Draft and Final version of the EIS and all related documentation.

- 1.4 Other tasks related to EIS

- 1.4.1 Follow the Department of Energy and Council on Environmental Quality regulations in 10 CFR 1021 and 40 CFR 1500-1508 and associated guidance in providing direction in completion of the EIS under 1.1.
 - 1.4.2 Attend meetings with local, state and appropriate Federal agencies as required where matters of Western's policy and environmental review requirements are discussed.
 - 1.4.3 In the event of differences of opinion regarding Western's directives, or questions about the content or relevance of any material, Western, in consultation with the Cooperating Agencies, will attempt in good faith to reconcile such differences with the Customer. As Lead Agency, Western shall have the right to make the final determination regarding specific actions to be taken to satisfy NEPA and applicable Federal laws, policies, and regulations.
 - 1.4.4 Review all comments on the Draft EIS and cooperate with Customer to ensure appropriate responses are developed.
- 1.5 Undertake consultation in accordance with Section 106 of the National Historic Preservation Act and ensure compliance with appropriate cultural and historic preservation requirements.
- 1.6 Undertake consultation in accordance with Section 7 of the Endangered Species Act and ensure compliance with appropriate endangered species requirements.
- 1.7 Undertake consultation with affected American Indian Tribes to comply with applicable requirements to ensure that Federal trust responsibilities are met.
- 1.8 Take appropriate action to ensure that applicable provisions of the Clean Water Act, Wetlands Protection Act, Floodplains Management Act, and the DOE Floodplain/Wetland environmental review requirements (10 CFR 1022) are achieved.

- 1.9 Based on studies conducted under the EIS, independently determine if mitigation measures proposed by the Customer are adequate to reduce significant adverse environmental impacts caused by the Project. Provide direction in preparation of a mitigation action plan, including a schedule and associated costs for mitigation actions to be completed by the Customer. In the event it is determined that mitigation measures proposed by the Customer are inadequate or additional work is required, collaborate with the Customer to meet the additional requirements. The Customer will be responsible for implementing the mitigation action plan and providing progress reports and a final mitigation action plan close-out report as provided by Section 2.5 below.
- 1.10 Prepare a Record of Decision. Prepare a draft and final version of Western's Record of Decision (ROD) regarding the EIS. Provide the Customer an opportunity to review and comment on the draft and final ROD prior to Western's approval and publication in the Federal Register.
- 1.11 Review and make any additions or deletions to the Administrative Record and/or documents provided by customer under 2.6. Western shall make a final determination as to the contents of the Administrative Record.

2. The Customer at its sole expense, shall:

- 2.1 Within 30 calendar days of signing this Environmental Review Agreement:
 - 2.1.1 Advance the funds identified in Section ____.
 - 2.1.2 Provide a contact for the environmental review, including name, address and phone number.
 - 2.1.3 Provide a proposed project timetable for submitting required environmental studies, documents and other information to Western.
 - 2.1.4 Implement periodic coordination meetings or teleconferences with Western for the purposes of discussing progress on the environmental review, identify issues, and ensure timely information exchanges.
 - 2.1.5 Provide a proposed layout of the project on a map base of U.S. Geological Survey 7.5 minute quadrangle or equivalent; that includes but is not limited to: locations of generation facility, location of access roads for construction and maintenance; location of meteorological towers; support buildings, transmission

lines, substations and other associated facilities.

- 2.1.6 Provide a detailed description of the project including, but not limited to: nameplate generation capacity, purpose and need for generation, generation technology employed, any alternative technology or alternative sites considered, transmission line voltages, lengths and structure type, square footage of buildings, substations and other associated structures, location of access roads and underlying landownership.
- 2.1.7 Provide a copy of all public notification and correspondence completed to date.

2.2 Other Customer specific tasks related to the EIS.

- 2.2.1 Fund all Western activities carried out in complying with the Department of Energy and Council on Environmental Quality regulations in 10 CFR 1021 and 40 CFR 1500-1508 and associated requirements.
- 2.2.2 **A.** Under 1.1A, the Customer shall utilize Western's statement of work, to enter into a contract with an environmental contractor selected by Western to prepare the EIS. Name a single individual to serve as the Customer's designated representative for purposes of administering the environmental contract. Select and engage the environmental contractor prior to the EIS scoping period **or [insert date]**.

OR

- B.** Under 1.1B provide funding for Western procurement of environmental contractor.
- 2.2.3 Coordinate planning and design with Western for work related to Western's involvement in the Project. Coordinate all environmental compliance matters related to the Project with Western.
- 2.2.4 Fully participate in activities outlined in compliance with environmental laws and regulations.
- 2.2.5 Perform (under 1.1A) or fund (under 1.1B) all required surveys and studies required for the EIS and other environmental review and approval requirements [e.g., cultural resource surveys, biological monitoring, wetland delineation etc.].

- 2.2.6 Provide a description of the Customer's best management practices and standard operating procedures, standard construction practices, and standard mitigation measures.
- 2.2.7 Proposed special mitigation measures (beyond the Customer's standard mitigation measures and best management practices) that may reduce significantly adverse impacts to a lower threshold.
- 2.3 Notify Western at least 90 days prior to taking any action that may have a material adverse environmental impact (e.g. ground disturbing activities) or that may limit the choices of reasonable alternatives so that Western may consider interim action approval as required by DOE regulations at 10 CFR 1021.211.
- 2.4 Acquire licenses, permits, clearances, and right(s)-of-way required for all parts of the Project.
- 2.5 Consider in good faith and concur with mitigation measures developed by Western as described in the EIS and adopted in the ROD, including the funding of Western's portion of the mitigation action plan (10 CFR 1021.331). The Customer shall implement the mitigation action plan and provide progress reports and a final mitigation action plan close-out report prior to being relieved of obligations under this Subsection.
- 2.6 Administrative Record.
 - A.** Under 1.1A, provide Western with an Administrative Record that documents all correspondence related to the review, meetings and meeting summaries, copies of all information provided to stakeholders, copies of correspondence received, copies of reports, data and other information produced by the Customer to support the environmental reviews, oral and written comments received from stakeholders; results of coordination with local, state, and appropriate Federal agencies, landowners and other interested citizens or groups (e.g. environmental groups).

OR

B. Under 1.1B, provide Western with documents all correspondence related to the review, meetings and meeting summaries, copies of all information provided to stakeholders, copies of correspondence received, copies of reports, data and other information produced by the Customer to support the environmental reviews, oral and written comments received from stakeholders; results of coordination with local, state, and appropriate Federal agencies, landowners and other interested citizens or groups (e.g. environmental groups) so that Western may complete the Administrative Record, at the Customer's sole expense.

- 2.7 Provide Western with progress reports at no greater than monthly intervals that describe ongoing studies and work; completed studies and tasks; correspondence between the Customer and local, state and federal agencies with interest in or jurisdiction over the project; identified issues; project schedule changes; and other information relevant to accomplishing the environmental review.
- 2.8 Continually work toward accomplishing the environmental review or Western will delay its decision on the application.
- 2.9 If Western notifies the Customer in writing (including e-mail) that specific information or action relevant to the environmental review is required from the Customer by a specific date and, in Western's judgment, that information is not received, or the action not completed, on the date required by Western, Western then will provide the Customer a "Notice of Suspension." The Notice of Suspension will notify the Customer in writing that, from that date forward, Western is suspending all activity on the environmental review until Western receives written notification from the Customer to re-commence environmental review (referred to as "Written Notice to Re-Commence"). Once Western receives the Written Notice to Re-Commence, Western then will have sixty days to prepare a revised schedule. The revised schedule will delay any prior schedule for the duration of the "on hold period" which is the date of Western's Notice of Suspension until the Written Notice to Re-Commence was received by Western plus sixty days. By executing this agreement, the Customer is aware that delay can result from the Customer's non-responsiveness during the environmental process and the Customer acknowledges that Western is under no obligation to expedite the environmental review once Western receives the Notice to Re-Commence. Following the Notice of Suspension, Western also may, in its discretion, deem the Customer's Interconnection Request withdrawn.
- 2.10 Customer understands Western's NEPA process and NEPA decision could be subject to litigation. As part of that litigation, a court could take an action including but not limited to, issuing an injunction enjoining Western's actions and enjoining any commitment of resources associated with Western's actions or ordering Western to conduct additional environmental review. Customer understands such court orders could be issued after Western executes its Record of Decision and that such court orders, including but not limited to injunctions, could result in delay. Customer agrees it is responsible for any and all monetary damages, including any and all costs and expenses, the Customer may incur as a result of any such court orders, including delay resulting from such court orders.