



Confederated Tribes  
of the  
Umatilla Indian Reservation  
Department of Natural Resources  
***Cultural Resources Protection Program***

P.O. Box 638 73239 Confederated Way  
Pendleton, Oregon 97801  
(541) 276-3629 Fax (541) 276-1966



January 25, 2007

Kimberly St. Hilaire  
Cultural Resources Program Manager  
Environment, Fish and Wildlife, KEC-4  
Bonneville Power Administration  
Post Office Box 3621  
Portland, Oregon 97208-3621

Dear Ms. St. Hilaire:

Thank you for the opportunity to comment on the latest (November 4, 2006) *Systemwide Programmatic Agreement among the U.S. Army Corps of Engineers, Northwestern Division, Bureau of Reclamation, Pacific Northwest Region, Bonneville Power Administration, the Advisory Council on Historic Preservation, the State Historic Preservation Officers for Washington, Oregon, Idaho, and Montana, and other Consulting Parties for the Management of Historic Properties affected by the Multipurpose Operations of the Fourteen Projects of the Federal Columbia River Power System for Compliance with Section 106 of the National Historic Preservation Act (PA)*. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Cultural Resources Protection Program (CRPP) appreciates that the Bonneville Power Administration, Corps of Engineers, and Bureau of Reclamation (Agencies) took the time to meet with us in December to discuss our concerns about this draft. We feel that considerable progress was made in understanding areas that were previously confusing. We will take the opportunity here to reiterate some of the comments that were made at the meeting in December. Your December 21, 2006 letter indicated an opportunity to further discuss our comments in conference calls in February. We would like to participate in these calls.

**Proposed New Language for the PA**

Overall, the CRPP feels that the PA as written reflects a document prepared by federal agencies working on their own. We had hoped that due to the history of the FCRPS program and the way it has been operating, the document would reflect a spirit of cooperation between the Agencies and Tribes. Such a cooperatively prepared document would be more similar to the Missouri River programmatic agreement in terms of tone and content. We suggest the following additions as a start to make sure the document reflects some of our Tribes' concerns. All of the following statements are taken directly or adapted from signed Agency documents.

Add "Whereas the Lead Federal Agencies' authorized operation and management of the FCRPS results in adverse effects to properties included in or eligible for inclusion in the National Register through inundation, erosion, exposure, vandalism, and other impacts."

Add "Whereas the impacts of system operations could eventually destroy a large percentage of the cultural resources within the APE; the cumulative effect would be the loss of heritage sites and traditional cultural resources from a river system in an entire region."

Add "Whereas the Lead Federal Agencies have committed to implement, in full cooperation with affected Tribes and agencies, agreements, plans, and actions for management of the impacts to cultural resources. Individual Tribes' desired approach and preferred methods for cultural resources management will be a major consideration in the development, as well as the implementation, of each of the long-term management plans."

Add "Whereas it is the policy of the Lead Federal Agencies to preserve, protect, and manage significant archaeological, historical, and traditional cultural properties within the APE in accordance with the NHPA and other applicable statutes, executive orders, and regulations."

Add "Whereas it is the policy of the Lead Federal Agencies to uphold the terms of treaties between the United States and Indian Tribes, and executive orders regarding Indian Tribes."

Add "Whereas the Lead Federal Agencies are required by Section 101(d)(6) of the NIIPA to consult with any Indian Tribe that attaches religious and cultural significance to historic properties that may be affected by undertakings as defined in the NHPA."

Add "Whereas the Federal Government has a trust responsibility to Indian Tribes, which includes the duty to act 'with good faith and utter loyalty to the best interests of the Indians'. The Lead Federal Agencies will act in accordance with the Federal trust responsibility, including government-to-government consultation whenever the Lead Federal Agencies' 'plans or actions affect trust resources, trust assets, or Tribal health and safety'. The Lead Federal Agencies will treat sacred and culturally significant places as subject to the Federal trust responsibility and therefore Tribes must be engaged in consultation before decisions are made, and Tribes expect to participate in making decisions and in carrying out decisions regarding these resources."

Add "Whereas this PA is designed to facilitate the development of processes and strategies to minimize, avoid, or mitigate the ongoing adverse impacts the operation of the FCRPS caused."

Add "Whereas this PA seeks to create a shared stewardship document that will ensure that sacred and cultural places are regarded and understood from various, including Tribal, viewpoints, and that Tribal values and customs (not just archaeological values and customs) are applied to the protection of these places. Until now, archaeological values have been dominant over Tribal values, and archaeological values have contributed to the destruction of sacred places."

Add "Whereas this PA's fundamental value is respect: respect for the rivers; the sacred and cultural places; Tribal values, culture, and beliefs; Tribal people and their contribution to the history and environment of the Columbia River system; for the sacrifices Tribal people have made so that newcomers can have flood control, irrigated crops, navigation, electricity, and recreational activities. When Tribal representatives talk about Tribes' cultures, needs, and issues, they will be taken as seriously as archaeologists are when they talk about Tribes' ancestors, culture, and interests."

#### **Concerns from our June 1, 2005 Comment Letter that Have Yet to be Addressed**

On June 1, 2005, we provided comments on a draft of this PA. When the next draft was sent to us, along with a table summarizing our comments and the Agencies' responses to them, we decided a face to face conversation was necessary to get answers to questions we posed. We requested that meeting in

December of 2005. The current draft of the PA was subsequently released. We will summarize here the questions that remain unanswered from June 2005, two drafts ago.

In June 2005 we expressed concern regarding the area of potential effects (APE). We appreciate that the Agencies have made some improvements in this arena, specifically by no longer referring to "demonstrated effects." However, Stipulation IIIB now refers to "non-federal lands where there is an adverse effect". The key word in APE is *potential*; there are many places within this document where that word is lost. Please remember that to be within the APE, any effect is potential (direct, indirect, and/or cumulative) and it need not be adverse.

As we stated in June of 2005, "We would appreciate input from the Federal Agencies on how they propose to determine if properties on private land to which the owners refuse access are: 1) eligible for inclusion in the National Register of Historic Places and 2) are being adversely affected by the undertaking. Mitigation will still be necessary for effects to eligible properties on private property to which access is denied but will apparently have to be off-site mitigation. The CRPP looks forward to further discussion with the Federal Agencies about the form this mitigation might take."

The affected Tribes and consulting parties were not part of developing the goals, objectives, and standards outlined in the PA. We understand that it is the Agencies' position that the Tribes and others will have an opportunity to influence those goals, objectives, and standards in the individual PAs, but we believe that since we were not able to assist in the construction of the framework which we will be required to work within, our ability to influence the final shape has been severely limited.

As we have repeatedly noted, there remain problems with the signatory parties. Our previous comment has been addressed with the statement "The Tribes will choose who signs." This shows a fundamental lack of understanding of the issue. The Tribal Historic Preservation Office (THPO) and the Tribal Government are two different entities. Whether or not the THPO signs determines geographically where within the APE this document takes effect. As we have noted, there are properties within the APE over which the CTUIR's THPO has jurisdiction. In addition, the CRPP objects to the current title of the PA, which individually lists each State Historic Preservation Officer, but lumps all the THPOs into "Other Consulting Parties."

We continue to believe that 30 years (Stipulation IIE) is too long for this document to be in place. We appreciate that the Agencies have provided opportunities for revisions, but we lack clarity on whether formal consultation will take place regarding how well the document is functioning. We suggest 10 or 15 years as an appropriate duration for this document, at which point it could be completely reviewed.

In June 2005 we brought up a concern regarding what were then lines 168-169, which read "Continue investigations to identify historic properties within the APE that are affected by FCRPS Project operations." We noted that "the lead federal agency is to identify historic properties within the APE and then determine which of those properties are being affected by the undertaking or are likely to be affected by the undertaking...The PA should also make it clear, in keeping with the NHPA, that all unevaluated sites will be treated as eligible until formally evaluated." The language in that section was changed, but the new version of the document uses a prioritization system (developed by the Agencies on their own) which limits the identification of sites within the APE.

In June 2005 we discussed concerns regarding prioritization regarding treatment or mitigation of effects. Many of those concerns remain. In response to our June letter, the Agencies addressed this comment by indicating that project specific PAs will address adverse effects. We reiterate that in addition to addressing mitigation/treatment of ongoing effects the Federal Agencies will need to mitigate effects that have already occurred.

In June 2005 we identified the problem of developing a system-wide research design for traditional cultural properties. This concern has not been addressed.

In June of 2005 we were unclear on what specifically the undertaking is, and we are sorry to say that we still don't understand. The fifth Whereas indicates that the Agencies' "coordinated implementation of these project purposes...collectively comprise the 'undertaking'..." The eighth Whereas states "This PA addresses operation of the Project for all Project purposes." We believe that it is *vital* that everyone involved, and people new to the FCRPS, have an understanding of what is and is not the undertaking. We implore the Agencies to dedicate themselves to crafting simple language to define the undertaking.

Our June 2005 letter ended with questions regarding the purpose of the PA. According to the National Historic Preservation Act regulations, the purpose of a PA is "to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings" (36CFR800.14b). This PA identifies its purpose in Stipulation I as follows:

- Set forth the Lead Federal Agencies' obligations, requirements, and standards pursuant to Section 106 of the National Historic Preservation Act
- Address Section 106 compliance
- Streamline Section 106 compliance through project-specific programmatic agreements or through project-specific historic property management plans
- exempt certain routine actions or other coordinated procedures (in project-specific documents)

As we read this PA, the only thing it actually does is the first bullet, set forth the Agencies' obligations, requirements and standards. All other activities are in the future; why are the other activities listed when they are *not* intended to be part of this document? The CRPP does not find this overarching PA to be a helpful document. It seems we might be better off with a simple memo from the Lead Federal Agencies, perhaps the Cultural Resource Subcommittee, to the Cooperating Groups saying "here is the framework that we would like to have in place. We will work through the project-specific programmatic agreements and see how the framework works or needs to be changed." In that case, it would not be necessary for everyone to agree on the overall framework, as it would be subject to change as needed in working through the individual programmatic agreements.

#### **Comments Tied to the November 4, 2006 Draft Text**

The eighth Whereas indicates that not all activities that are part of the undertaking described in this PA will involve the BPA. Will the BPA still be a lead federal agency for those subundertakings? If not, will it be clear to the Tribes and other consulting parties who the Lead Federal Agency is?

Page 3, Now Therefore commits "above named parties" to actions; the PA will only commit signatories to actions. This may be an appropriate place to note that this PA will only apply to certain portions of the APE; those covered by the historic preservation offices that have signed.

#### *Stipulation I Purpose of this Systemwide PA*

IC, do the Agencies anticipate working with Tribes or other consulting parties on making a determination of which compliance manner will be implemented?

IC3 states "Develop and implement both a Project-Specific PA and HPMP at the discretion of the Lead Federal Agencies in consultation with interested parties." The Agencies' obligations to Tribes are different from those to "interested parties." Tribes should not be lumped with interested parties or other consulting parties such as the historic preservation offices.

*Stipulation II Systemwide PA Principles for Section 106 Compliance*

IIA1 indicates the APE will be defined in Stipulation III. The document would flow more smoothly if the APE were simply defined here.

IIA2 discusses prioritization. As noted above, the CRPP has had and continues to have considerable difficulties with the concept of prioritization presented in this document. We believe that it is more consistent with the National Historic Preservation Act and with other Agency responsibilities to Tribes to state what the law requires and that it is the goal of the Agencies to comply with that law. The CRPP believes it is not necessary or appropriate for the entire system to approach compliance with the National Historic Preservation Act in the same way. Rather, each Cooperating Group will determine which steps to take in which order to achieve compliance with the National Historic Preservation Act. Specific changes to this section are recommended below.

- It is more consistent with the regulations to use the term "resolution of adverse effects" rather than "treatment."
- The second sentence contains two clauses that do not agree. The first clause involves "effects of their undertaking" and the second clause implies that the undertaking is only causing part of the effect. If the effect is due to the undertaking, the Agencies need to consider that effect. The regulations do not discuss percentages of responsibility.
- The third sentence contains the term "principal causative factor." This term is not used in the regulations and is inappropriate here. It suggests the Agencies are seeking to avoid taking some effects into consideration. If there is a specific issue to which the Agencies are responding here, perhaps we could discuss it and develop alternative language.

IIA3 states "The Lead Federal Agencies do not anticipate implementing an inventory throughout the APE." The CTUIR believes an inventory of the whole APE should be a long-term goal. The Agencies should not be using this document to limit their options. Please clarify in this paragraph that all formally unevaluated sites will be considered eligible until formally determined not eligible. Please add the following to the end of the paragraph "; however, the Lead Federal Agencies may have further responsibilities toward these resources under other applicable statutes, regulations, and policies, such as NEPA."

The CRPP believes Stipulation IIA4 may be an area in which the Agencies could streamline the 106 process. We recommend changing this paragraph to "The Lead Federal Agencies acknowledge the undertaking has adversely affected and/or continues to adversely affect hundreds of historic properties. The project specific PAs will develop plans to resolve those adverse effects in consultation with affected Tribes and other consulting parties."

IIA5 states, "Seek to avoid or minimize adverse effects on historic properties when feasible and cost effective, recognizing there may be limited opportunities to do so within the operating pool of an existing reservoir." The term "feasible and cost effective" is not in the regulations and should be completely removed from this document. Delete the clause "recognizing there may be limited opportunities to do so within the operating pool of an existing reservoir." There seems to be a general trend in this document to lower expectations. The CRPP believes that this document should set a high bar for the Agencies to strive for, not indicate before they even try that they have decided they can't comply with the National Historic Preservation Act. This paragraph could just as easily have contained the clause "recognizing that the civil works arm of the US government may be able to develop revolutionary ideas for avoiding and minimizing effects to historic properties within the operating pool of an existing reservoir." Finally, add to the paragraph, "If adverse effects cannot be avoided or minimized, they will be resolved in consultation with Tribes and other consulting parties."

IIA7 also contains the term "cost effective"; delete it. The paragraph as a whole indicates that the Agencies will consult with Tribes and other consulting parties regarding identification and treatment or mitigation measures. Is there a reason that evaluation of historic properties was not included in this paragraph?

IIA8 delegates the development of procedures to be followed in case of emergency to the individual programmatic agreements. Based on our history, it is difficult to believe that the Corps of Engineers will be willing to delegate this responsibility from the Division to the District. If possible, the CRPP prefers to use "inadvertent discovery" to refer to human remains and "unanticipated discovery" to refer to archaeological sites. The steps to follow with each will be different and it is at times confusing to have a single policy.

IIB contains the clause, "consistent with procurement and other regulatory requirements of the LFAs." Please remove this clause as the professional qualification standards are not voluntary standards.

IIC discusses public benefit. Stipulation IB of the PA stated that the purpose of the PA is to "Address Section 106 NHPA compliance only." Therefore, we are unclear why Stipulation IIC invokes Sections 1 and 2 of the NHPA. Section 106 does not require a public benefit. Please review Stipulations 15, 16, and 17 of the Missouri River PA for improved language on this subject.

IIC4 refers to "the promotion and use of collections for education and research purposes, consistent with 36CFR79.10." 36CFR79 does not contain the word "promotion" or "promote." The CRPP has repeatedly asked the BPA and Corps to work with the CTUIR and the universities that curate FCRPS collections to improve communication and consultation about studies of collections. The PA is a place in which to describe the communication process surrounding studies of such collections.

What specifically is meant by Stipulations IIC3 ("Illustration of accomplishments made in implementing this PA") and IIC5 ("Consideration of actions that seek to protect historic properties so the resources remain available for future generations")? Please provide further explanation. Also, the CRPP is left wondering if the Agencies can't afford to identify, evaluate, and assess effects, how can they afford to develop heritage tourism as required under Stipulation IIC6?

IID states "Consulting parties have an obligation to provide timely responses and comments back to the Lead Federal Agencies." The word "obligation" is inappropriate. Please clarify "30 calendar days;" is that from date of receipt or of mailing? Please clarify that the request for comment will reach the appropriate people; the Agencies have a history of sending documents only to the Chair despite requests to ensure that technical staff are copied. This document may want to include a list of key personnel titles. This paragraph goes on to state, "If the consulting party fails to respond within 30 calendar days, the Lead Federal Agencies can assume concurrence with any proposed action made in the request for comment." Lack of response means only that there has been no response and the process can move on to the next step. Lack of response has no implication as to whether or not a consulting party agrees with a proposed action. See also Stipulation VE2.

#### *Stipulation III Area of Potential Effects*

IIIA provides a definition of the APE. The CRPP recommends using the language from 36CFR800 to define the APE. The definition provided does not adequately address indirect and cumulative effects.

IIIB needs to ensure that effects are being considered as well as adverse effects. For example, on the third line (in the first sentence), the APE encompasses areas "where there is an adverse effect caused by the undertaking." Under the National Historic Preservation Act, the APE encompasses areas where the undertaking has the potential to affect historic properties. The second sentence states, "The APE may

also include lands in downstream reaches" where "the undertaking causes adverse effects on historic properties on such lands." The APE includes lands where the undertaking has the potential to cause effects to historic properties.

IIIC is unnecessary as the APE is what it is and the fact that it may be discontinuous is clear from the regulations' definition of the APE.

The last sentence of Stipulation IIID should be removed; Stipulation III is about the APE and it is confusing to discuss what will happen once the APE is determined in this section.

*Stipulation IV Priority for Identification, Evaluation, and Treatment of Historic Properties*

IVA; replace the word "cannot" in the first sentence with "will not". The second sentence brings up an issue that is common throughout the document. It indicates the Agencies will set priorities in consultation with "signatory parties." Change this to "affected Tribes and other consulting parties" since whether or not a Tribe signs this is irrelevant to the Agency's requirement to consult with them.

The CRPP reiterates our objection to listing the prioritization factors if the priorities will be established in the site specific PAs in consultation with the Tribes and other appropriate parties. We believe the Agencies should state they will comply with Section 106 as quickly as possible, understanding that the affected Tribes and consulting parties will help develop a schedule to do the work. As written the prioritization factors imply that decisions are being made about which sites are more eligible for inclusion in the National Register of Historic Places. As we have discussed, sites are either eligible or they are not; there are no degrees of eligibility.

IVB should also be left to the project specific PAs. It is not clear how one could apply this process to non-archaeological historic properties. Stipulation IVB2b prioritizes historic properties of "particular scientific or cultural importance." What does "particular" mean, to whom is it important, and who is deciding?

IVB3a includes properties that are not be affected by the undertaking. If the property is not affected by the undertaking, why is it covered by this PA?

IVC indicates that TCPs will be prioritized in the same way as archaeological sites; this cannot work. We understand that some of the limitations in the language regarding TCPs in this document relate to the fact that Agency personnel working on the PA do not have expertise in the area of TCPs. We hope that for the next draft, the Agencies will work closely with people who do have that expertise to ensure that the document no longer appears to favor archaeological historic properties over other types of historic properties.

*Stipulation V Use of Project Specific PAs or HPMPs to Comply with Section 106*

Do the Agencies have an example of what a project specific PA/HPMP will look like? Has anyone done one the Agencies feel meets the needs for which it would be used here? The CRPP would feel more comfortable committing to a type of document if we could review one first. Please note that 36CFR800.14 references programmatic agreements, not HPMPs. Will the HPMP have similar effect to a PA or will it be something else? Will the Agencies work with the affected Tribes on which document to use? Stipulation VA refers to a signed HPMP. Who will sign a HPMP?

VC2 indicates that a HPMP takes effect when the Agencies tell the signatories it is in effect. There does not appear to be any consultation with Tribes or other consulting parties in this process.

VD1 indicates that if the specific PAs/HPMPs do not use the same prioritization designated in this PA they will need to be revised to match. How is this consistent with Stipulation IV which indicates there will be further discussion about the prioritization plans?

VD2 needs to clarify that affected Tribes and consulting parties will be consulted. What will happen if the project specific PAs are not signed within 7 years?

VE1's second sentence should clarify that sending Tribes a document for review and comment is not consulting with the Tribes about the document.

VF1 uses the terms "affected area" and "area affected." The CRPP recommends using the term APE to be more consistent with the regulations. We reiterate the importance of the word *potential*.

VF3 indicates the processes for identifying, evaluating, assessing effects to, and resolving effects to historic properties "will be defined using the prioritization process outlined in Stipulation IV." Stipulation IV was not developed in consultation with the CTUIR and we do not believe it is appropriate.

VF5's first sentence states, "Define a process for determining appropriate resource-specific treatments for historic properties adversely affected by the undertaking as the undertaking is implemented at that Project." What does "as the undertaking is implemented at that Project" mean? The third sentence lists "historical or oral history research to document characteristics and cultural values" as a form of treatment. Please note that this type of research is more consistent with inventory and evaluation than resolving adverse effects.

VF9 indicates the project specific PAs/HPMPs will "outline a schedule for completion of compliance actions for the undertaking." Describe what that includes.

VF10, change the last clause to read "by the President, or the Governor of a state, or the Leader of a tribal government within their areas of jurisdiction."

#### *Stipulation VI Systemwide Research Design*

The CRPP continues to believe that a system-wide research design is unlikely to be successful. Given the extensive APE of the undertaking, which encompasses various culture areas, the research design will not pose meaningful questions even for the archaeological sites. A research design is not an appropriate instrument for addressing all types of historic properties. How will the Agencies address the fact that some types of historic properties are valued for reasons other than the information they contain (TCPs, some built environment, cultural landscapes)? How does the development of research objectives adequately value these types of sites?

VIB states "The Systemwide Research Design will be prepared with input and assistance from the consulting parties for this PA as well as other professional researchers." Is there an intention to consult with Tribes and others about this research design? Will the professional researchers be paid for their input? Will other contributors?

#### *Stipulation VII General Products*

VIIA2 discusses an annual report: "The baseline data will include a narrative highlights section, supported by tabular data on acres surveyed, sites recorded, sites evaluated, sites treated, and materials curated." We believe the Agencies are losing the big picture of the purpose of Section 106 compliance in minutiae. We believe the point of this and the other PAs is to recognize that looking at this undertaking in this usual way is not working and that we need an alternative approach. This alternative approach might say "We have an undertaking which is adversely affecting many, many historic

properties. The Agencies are taking those adverse effects into account and are going to resolve those adverse effects in the following manner." This is what we had hoped that this PA would say, and that we would be discussing how to resolve those adverse effects creatively.

*Stipulation VIII Consultation and Coordination*

As mentioned above, it is crucial that the Agencies break the Tribes out from other consulting parties here. Please clarify Agency responsibilities to Tribes, which are different than responsibilities to other parties. We need a clear understanding of consultation with the Tribes as Tribes and with the Tribes as participants in Cooperating Groups. What will happen if a Tribe decides it is no longer able to attend Cooperating Group meetings? That will not change the Agencies' responsibility to consult with the Tribe. Stipulation VIII B's sixth sentence states, "Communication within the Cooperating Groups does not replace consultation pursuant to 36CFR part 800 or government to government consultation with Tribes as appropriate." Please expand on this. Thus far with this undertaking, consultation seems to take place primarily through the Cooperating Groups, except for the development of this agreement. Consultation may be another reason for the Agencies to seek an alternative to 36CFR800's normal process; the undertaking is ongoing making the normal consultation process outlined in the regulations confusing. How exactly do the Agencies propose to consult on this undertaking?

VIII B5 indicates that the Cooperating Groups will assist in "Drafting or reviewing other plans that may be needed to conduct interim compliance." Please provide an example of this. Stipulation VIII B6 indicates the Cooperating Groups will provide "data and reporting accomplishments to incorporate into the Annual Report." What will the process for this be? This sounds like a considerable amount of work.

VIII C indicates that members of the Cooperating Groups are "obliged to provide timely input and responses to the group." "Obliged" is not an appropriate word here. The second sentence states "For each product, the Cooperating Group will define a schedule for actions contributing toward preparation or review of the product." What is a product? What does this mean?

*Stipulation X Review of the PA*

XA2 indicates that upon request, a signatory party can identify unresolved issues during review of the PA and then consultation will take place under 36CFR800. Stipulation VIII B suggested that there was going to be parallel consultation through 36CFR800 under the PA. Please clarify.

XA3 indicates that the outcome of discussions will be shared with anyone who submitted comments. It may be inappropriate to share the contents of government to government consultation with other governments or the public.

*Stipulation XI Dispute Resolution*

Are changes to the PA considered an undertaking? If so, whether or not a Tribe has signed, consultation will be necessary. If not, the CRPP believes it would be inconsistent with 36CFR800.14 not to include affected Tribes in consultation regarding changes to a document that required consultation in the first place.

XIA2 indicates that a written proposal for resolution of problems will be sent to the ACHP. Do the Agencies write this? Can the objecting party write their own? Will the proposal go out to affected Tribes and other consulting parties?

*Stipulation XII Amendment*

XII B should specify that Agencies will consult with affected Tribes regarding amendments. The stipulation indicates that if an issue is specific to a project, the requesting party will be referred to the

project-specific agreement. What will happen if the request for amendment is determined to be specific to a project but the project specific document has not been completed?

*Stipulation XV Authorities, Effective Date, and Other Provisions*

XVE says that the PA goes into effect when the Agencies and ACHP sign. That means that if none of the historic preservation offices sign, it will still be in effect. How does that work with the clause that if any of the historic preservation offices pull out, the PA is not valid on lands in their jurisdiction? Also, how does this clause fit with 36CFR800.14(b)(2)(iii): "Effect. The programmatic agreement shall take effect when executed by the Council, the agency official, and the appropriate SHPOs/THPOs."

*Signatories to the Systemwide Programmatic Agreement*

The Confederated Tribes of Warm Springs Reservation of Oregon, Yakama Nation, and CTUIR THPOs (at a minimum) must be added.

*Attachment 2 Schedule to Implement Commitments in this Systemwide Programmatic Agreement*

The third entry is to "Assess existing project-specific PAs or HPMPs and set schedule to update existing or prepare new PAs as needed." Who will assess and set the schedule? The attachment's heading indicates the schedules may be "modified in consultation with signatories to this Systemwide PA with an interest in that Project." Please clarify that affected Tribes will be consulted regardless of whether or not they sign the PA.

*Attachment 3 Glossary of Definitions for this Systemwide PA*

The definition for Interested Party cites 36CFR800.14(b)(2)(ii), but in the regulations this section discusses public participation. The term "interested party" is not used in 36CFR800.

*Attachment 4 Checklists for Historic Property Management Plans, Treatment Plans, and Annual Plans*

HPMPs will include a list of historic properties. How will that work when information regarding TCPs is not shared? HPMPs will contain "A process for integrating TCP research with the archaeological and historical site identification and evaluation activities." Explain what this means. HPMPs will include "A process to update records to reflect new data." What do the Agencies mean by records? HPMPs will include "A process for peer review of potentially significant research or educational products." What does significant mean here? HPMPs will provide "General standards for fieldwork, analysis, reporting, and site treatment." How will these tie into SHPO/THPO standards? HPMPs will include "A general schedule for long-term completion of compliance requirements." Do the Agencies see these documents as products to be contracted out? How will anyone outside the Agencies/Cooperating Groups do this?

Do properties have to be formally determined eligible for treatment plans to be prepared? How will this work for TCPs? Attachment 4 indicates the Agencies will prepare plans in coordination with SHPOs/THPOs and with input from Cooperating Groups. Will affected Tribes be included? Sites will be chosen for treatment based on factors "including the potential to yield important new information." These criteria are not appropriate for several types of historic properties. The last bullet includes a number of things to consider that were already listed and identifies final selection criteria; shouldn't this decision be left to the individual PAs?

Annual Work Plans will require "An estimated level of effort for each activity and proposed cost." What does level of effort mean here?

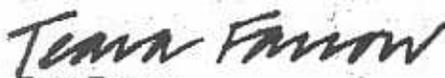
Earlier in this document, I suggested that the Agencies are wrapped up in the minutiae and losing track of the big National Historic Preservation Act picture. I fear that the CRPP is having the same problem. We feel that this would be a very different document if the Agencies, Tribes, and other consulting parties had sat down together early on to brainstorm what this document should look like. At this point, we feel

bound to respond to the individual points in the document, but would prefer to step back and look at the problem the document seeks to solve from new angles. I suspect that may be a faster way to reach a final, creative document we are all satisfied with.

The Agencies have asked us to respond to this draft, and we continue to have a number of concerns regarding the PA. As it is currently written, the CRPP could not recommend a signature to either our THPO or our governing body. We understand from reading the minutes of the other Tribes' meetings with the Agencies that there will be a considerable amount of new proposed language coming in. If the Agencies wish to pursue completion of this document, we suggest that the Agencies complete the conference calls suggested in your December 21, 2006 letter, compile the recommended language into a new draft, and then have a meeting at which the Tribes and the Agencies can review the document line by line, making suggestions and having discussions along the way. We are also happy to discuss radical changes, informed by the big picture.

Thank you again for soliciting our comments regarding this document. If the Agencies have any questions about our comments, please feel free to contact me, Shawn Steinmetz, or Catherine Dickson at (541) 276-3629 or tearafarrow@ctuir.com, shawnsteinmetz@ctuir.com, or catherinedickson@ctuir.com. A quick telephone call may be able to clear up confusing language.

Respectfully,



Teara Farrow  
Program Manager

cc: Johnson Meninick, Yakama Nation  
Kevin Cannell, Nez Perce Tribe  
Camille Pleasants, Confederated Colville Tribes  
Sally Bird, Confederated Tribes of Warm Springs Reservation of Oregon  
Marcia Pablo, Confederated Salish and Kootenai Tribes of the Flathead Reservation  
Kevin Lyons, Kalispel Tribe of Indians  
Randy Abrahamson, Spokane Tribe of Indians  
Jill Wagner, Coeur d'Alene Tribe  
Josephine Shottanana, Kootenai Tribe of Idaho  
Rex Buck, Wanapum Band  
Chuck James, BLA  
Sonya Tetnowski, BPA  
Jamae Hilliard Creecy, BPA  
Lynne MacDonald, Bureau of Reclamation  
Gail Celmer, Corps of Engineers  
Direlle R. Calica, Corps of Engineers  
Barbara Creel, Corps of Engineers  
Rob Whitlam, Washington Department of Archaeology and Historic Preservation  
Dennis Griffin, Oregon State Historic Preservation Office  
Stan Wilmoth, Montana State Historic Preservation Office  
Suzie Neitzel, Idaho State Historic Preservation Office  
Tom McCulloch, ACHP