



## United States Department of the Interior

NATIONAL PARK SERVICE  
Lake Roosevelt National Recreation Area  
1008 Crest Drive  
Coulee Dam, Washington 99116-1259

IN REPLY REFER TO:  
H30

January 30, 2007

Tribal Affairs-DKT-7  
P.O. Box 14428  
Portland, OR 97293-4428

RE: Comments on Draft FCRPS Systemwide PA

We consider the Systemwide Programmatic Agreement (PA) a positive step in coordinating the Lead Agencies efforts to address the effects of operations on Historic Properties.

However, the National Park Service (NPS) has concerns that the Draft PA does not properly define the roles of the land-managing agencies in the various project areas. Land-Managers (which may be the Lead Agencies, Tribes, or other Federal Agencies) have the ultimate responsibility for managing cultural resources in their jurisdiction under both the National Historic Preservation Act (NHPA) and the Archaeological Resources Protection Act (ARPA). Although it is understood that Section 106 of the NHPA mandates that the Lead Agencies address the effect of system operations on cultural resource sites, the land managers are responsible for the welfare of the sites under Section 110 of the Act. Therefore, all actions that affect a site must be reviewed and *approved* by the land manager prior to its implementation. NPS, of course, would not make any decisions on the management of a cultural resource without consultation with the Tribes and the State Historic Preservation Office. But NPS feels it needs to be made clear in the PA that the land managers have a unique role that is more than a consulting, interested, or concurring party. One example of this special relationship is that the Lead Agencies cannot simply assume concurrence from the land managing agency if they haven't commented within a 60 day review period as stated in Stipulation II (D). The lead agencies must have approval from the land managing agencies under Section 110 of the NHPA and in many cases receive an ARPA permit before any ground-disturbing activity takes place on an archaeological site.

The National Park Service suggests that certain passages be modified, added, or deleted.

Firstly, the role of the land-managing agency needs to be clarified early in the document, preferably in the "Whereas" section. Stipulation I (B) states that Section 110, ARPA and NAGPRA remain the responsibility of the agencies and this relationship is also affirmed in Stipulation XV (C) which states that the PA does not "alter or affect any governmental authority, jurisdictional rights, or property boundaries of the States, any Indian Tribe, or other governmental agency..." However, the

remaining stipulations in the PA do not define the relationship between the mandated responsibilities of the agencies, tribes and states and the Lead Agency's Section 106 consultation process.

Stipulation V (E) (1) should be modified to verify the role of the land managing agencies in the development of the HPMPs.

Stipulation VIII (B) defines the role of the Working Groups as a communication forum that provides technical and planning advice to the Lead Agencies. The stipulation states that participation in the Working Groups "does not replace consultation pursuant to 36C.F.R. part 800..." The last line in the Stipulation states that the Lead Agencies "retain final decision-making authority for actions recommended by the Cooperating groups". This statement defines the role of the Working Groups in the Lead Federal Agency decision-making process; it does not properly define the role of the land managing agencies in approving those decisions.

The relationship with the Land-managing agency is also poorly defined in Stipulation VIII(C). The last line states that the Lead Federal agencies may proceed with an activity if the Working Group members do not meet the schedules. NPS would claim that the Lead Federal Agencies could go forward to begin consultation with the land-managing agencies and the Tribes about a proposed action. It must be made clear here that the stipulation is only referring to technical products for review or production by the members of the Working Group.

Stipulation XI (5) states that during the Dispute Resolution process, the Lead Federal Agencies can proceed with an action after notifying the objecting party, the ACHP and other consulting parties. NPS would state that the action could not take place without approval from the land-managing agency, which has Section 110 responsibilities and in many instances will have to issue ARPA permits.

In summary, NPS feels that although several paragraphs in the PA state that the PA does not alter any other regulations or legal responsibility of other agencies or jurisdictions, most of the stipulations fail to define how these responsibilities affect the consultation process. NPS feels that its position on the PA is in accord with the Lead Agencies response to a comment on the 2005 Draft that stated the "...Corps, at their respective reservoirs, have added responsibility as land managers".

Thank you for providing us the opportunity to review and comment on the Draft PA.

Sincerely,

Debbie Bird

Debbie Bird  
Superintendent