

February 24, 2007

Ms. Kimberly St. Hilaire
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

RE: Draft Programmatic Agreement for the Section 106 Review of the Operations of Federal Columbia River Power System

Dear Ms. Hilaire:

Thank you for requesting our views on the draft Programmatic Agreement (PA) for Section 106 Review of the operations of the Federal Columbia River Power System. I apologize for the tardiness in our response. I appreciate, however, meeting with you and the other agency representatives last month to discuss the agreement. The discussions were very helpful. As stated, this version is a significant improvement over the last one. Below are our comments on this draft:

Title: Tribal Historic Preservation Officers should be included as participants.

General comment: The entire agreement should be revised as needed to ensure that historic buildings and structures are fully considered. As is, it addresses only archaeological sites and traditional cultural properties (TCPs).

Stipulation I.C. The sentence about streamlining should be deleted. This PA, in its current form, does not result in a streamlined process. It is merely an umbrella agreement under which other agreements can be negotiated that may indeed streamline the process. At our meeting there was discussion about trying to develop a list of exemptions that could be applied basin-wide. I would be happy to review such a list; however, I question if attempting to draft one is worth our time. I am skeptical that a worthwhile list could be agreed upon considering the scope and diversity of the region, projects, and participants. I do believe that such a list could and should be developed at the project level.

Stipulation II.A.2. The last sentence of this paragraph is troublesome. How will the source or extent of effects be determined? In FERC relicensings, we have witnessed very costly studies and lengthy debates to try to resolve these very issues, and in turn, great delays in implementing any mitigation. I understand the agencies' reason for including this language, but I can see how this effort could deadlock the entire program.

Stipulation II.A.5. This caveat “when feasible and cost effective” should be deleted. The 106 Review process requires agencies to identify historic properties and seek ways to avoid, minimize, or mitigate adverse effects on historic properties—not just when it is inexpensive. We understand that costs and cost effectiveness need to be entered into the equation, but this should be addressed in a separate stipulation. It would also be better to state that the agencies will “Seek ways to avoid or minimize...”

Stipulation II.A.8. Basic procedures for inadvertent discovery and emergencies should be defined in an appendix.

Stipulation II.B. It is not clear what is meant by stating that the agencies will apply the professional qualifications standards “in a manner commensurate” with the nature and complexity of the specific property or resource being investigated. This should be better explained.

Stipulation C. I greatly appreciate the addition of this section. A key purpose of the Federal preservation program is to preserve our nation’s heritage for the enjoyment and appreciation of present and future generations. All too often, the public does not benefit from Section 106 or 110 activities. As we discussed in the meeting, it would be helpful to provide examples of the items listed under this stipulation. Also, how do you intend to fulfill item number 3: “Illustration of accomplishments made in implementing this PA”?

Stipulation III.A. Cumulative effects should be also considered in the definition of APE (and assessment of effects).

Stipulation III.B.1.a. As noted above, determining the “primary agent,” if possible in the first place, can be difficult and costly.

Stipulation III.C. The agencies should keep in mind that some tribes define TCPs very broadly--in some cases, so broadly that all archaeological sites are considered TCPs. With this in mind, the statement about restricting access to information or items associated with TCP “values” could result in restricting access to all archaeological collections associated with a project. Such restrictions could conflict with the access provisions of 36CFR79.

Stipulation V.C.1. It may be very difficult to execute a project-level PA if the signatures of all affected or interested tribes and affected or cooperating agencies are required. It has been our experience that some tribal governments will not sign agreements even if they are supportive of the content. In the second case, a “cooperating” or affected agency may not have enough interest in the project or authority to sign. You may want to consider rewording this to allow a project-level PA to be executed with the signatures of the Lead Federal Agency (or Agencies) SHPO(s), THPO(s), tribes who have tribal land within the APE, and land-managing agencies who have land within the APE.

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Stipulation VI: As discussed in the meeting, it may be worthwhile to develop a list of data to be collected in archaeological investigations so that system-wide questions can be answered.

Stipulation VIII. We support the suggestion to move the “Consultation and Coordination” section to the front of the document.

Attachment 2. The fourth item down on the Schedule would be more clearly stated if it read “Two drafts annually...”

Attachment 4: The checklist for Historic Properties Management Plans should specifically call for a link between the prioritization process outlined in Stipulation IV and identification, evaluation, and treatment activities outlined in an HPMP. It should also include a curation plan “consistent with 36CFR79.” You may want to include a sample Table of Contents for an HPMP.

Treatment Plan Principles: Preparation of National Register nominations, HABS/HAER documentation, and historical documentation (at a level less than HABS/HAER) should be included as treatment options.

Additional appendices: As stated above, general procedures for inadvertent discoveries and emergencies should be provided as an appendix. It would also be very helpful to include appendices that offer a boiler plate for a project-level PA and an example list of exemptions (if a list is not developed as part of this PA).

We appreciate the agencies’ efforts and those of the Advisory Council in developing this agreement. If you have any questions, please feel free to contact me at 208-334-3847, ext. 107.

Sincerely,

Susan Pengilly Neitzel
Deputy SHPO