Comments Received on Oct. 21, 2006 Version of Draft FCRPS System-wide PA

1. Confederated Tribes of the Colville Reservation
2. Coeur D'Alene Tribe
3. Confederated Salish and Kootenai Tribes
4. Confederated Tribes of the Umatilla Reservation
5. Confederated Tribes of the Warm Springs Reservation of Oregon
6. Nez Perce Tribe
7. Spokane Tribe
8. Confederated Tribes and Bands of the Yakama Nation
9. USFS Region 1
10. OR SHPO
11. ID SHPO
12. WA SHPO
13. Advisory Council on Historic Preservation

cover

The Confederated Tribes of the Colville Reservation
P.O. Box 150, Nespelem, WA 99155 (509) 634-2693
History/Archaeology Department FAX: (509) 634-2694

January 30, 2006

Mr. Steve Tromly, Cultural Resource Manager
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

Re: Comments on Comment Record Preparatory to the 2nd Draft Programmatic Agreement and the 2nd Draft Agreement.

Dear Steve,

We have reviewed the Excel spreadsheet entitled Consolidated Comments on Draft FCRPS PA (3/02/05 Version) 10-21-05 and the new draft PA. The hard work displayed in collating and responding to 165 comments and redrafting the FCRPS System-wide PA is acknowledged and appreciated. There are a few issues still to be resolved.

Remarks on the Consolidated Comments Responses

1. The following was forwarded in response to the comments entered as numbers 147, 150, and 165: "The Colville Tribes may choose to be either a signatory party or a concurring party, but cannot sign as both. The Colville will determine who signs to represent them as either signatory or concurring party to the agreement."

   Our intent with the initial comments was to clarify that under 36 CFR 800 the Tribal Historic Preservation Officer (THPO) for the Confederated Tribes of the Colville Reservation (hereafter, Colville Confederated Tribes or CCT) should be signatory under THPO regulatory and compliance responsibilities (800.3, 800.4, 800.5, 800.6 and 800.7). The Colville Confederated Tribes, proper, needs to be signatory as a tribe, concurring under their consulting role (800.4, 800.5 and 800.6) and as a land manager on more than one of the projects' lands [As clarified in response to Comment # 101]. Thus, both the THPO and the Colville Business Council should be full signatories. This is not dual representation for the CCT any more than the multiple signatory federal agencies are for representing the interests of the United States.

2. Under what is identified as Comment # 151, the CCT asked for the removal of professional researchers from those identified as participants in development of a system-wide research design. The respondent(s) note, "NHPA directs agencies to include all interested parties." Yes, the NHPA does direct agencies to consult with all interested parties, including the public; professional researchers are part of the public with no additional status under NHPA.

The PA is not with "all interested parties". Most of the parties have professional researchers in their employ; parties are free to contract with professional consultants. This section of the agreement does not uniformly include professional researchers. Neither Goal 1 nor Goal 3 of that section of the PA includes professional researchers. Please note that under Goal 2, items i, ii, v and vi are only for the agreement participants; item iii is reserved for the Lead Federal Agencies. Professional researchers should not be included in the agreement.

3. In a similar vein, the comments numbered 156, 157, and 158 were meant, in part, to limit interested parties to those identified in 36 CFR 800.2, specifically: (800.2a) Agency Official, (800.2b) Council and (800.2c) Consulting parties – SHPO/THPO, Indian tribes, and the public. Note that the public is only involved through agency procedures and/or at appropriate points. The CCT sees no legally compelling argument to open the door to the project specific instruments to those whose interests may prove to be antithetical to the intent of the NHPA. For example, the agencies may be compelled to consult with recreationists that want a boat ramp in the middle of a Native American cemetery, but there is no reason the agreement parties should be subjected to such persons or organizations. Neither is there any reason to invite other than the agreement participants to discussions of, or provide documents to others that contain site specific information or sensitive site information; in fact the opposite is true.

4. The implications of and response to Comment # 55 is of interest. The initial comment appears hypersensitive to the intent of the bullet: "To develop plans and schedules for activities to meet the HP Program goals and objectives". Comment #55 interprets the bulleted statement as a reference to contract deliverable schedules as opposed to program schedules. By acceding to the comment and watering down the cooperating group responsibilities the respondent(s) endanger the entire cultural resources management process by making it secondary and subservient to the FARs. It is repeatedly made clear in responses to other comments that the intent of the PA is to address Section 106 of the NHPA, see, for instance, the responses to comment numbers 23, 36, 72, 73, 74, 82, 85, 100, 101, 118, 125, 135, and 159.

   If we diminish the duties and responsibilities of the cooperating groups too much, there will be little reason to participate in the groups. We recommend keeping the focus of the PA on cultural resources and cultural resource laws, restoring the section of the PA in question more toward its original wording and responding to the comment more in keeping with those listed above; stating the wording will be consistent with Section 106 requirements, as opposed to changing wording in reaction to other regulations.

5. Comments numbered 30 and 31 appear to be rewriting federal regulations in general and NHPA in particular by prioritizing actions by property ownership and not by adverse impacts to significant sites. We should be addressing the 106 process regardless of where the impacts are occurring. The CCT understood one purpose of the PA was to establish a mechanism to manage the effects of an undertaking so large and complex as to require cooperative planning, prioritization, and implementation. To predetermine priorities based on the desires of a single agency is counterproductive.

Remarks on the Revised Draft Programmatic Agreement

6. Lines 80-86 discuss addressing all adverse effects of multi-purpose Project operations but, because of the size and number of properties, implementation of compliance will be over a lengthy period of time. These comments open the door to remarking on the funding base. It would be appropriate to increase funding to address mitigation needs. Multi-purpose operations include fish and wildlife actions. Since it is speculated that fish recovery under the ***Draft Revised 2000 Biological Opinion on the Operation of the Federal Columbia River Power System*** is estimated at six billion dollars ($6,000,000,000.00) over the next ten years, the application of one percent of those funds to culture resources would amount to sixty million dollars ($60,000,000.00). That would double the current annual budget for cultural resources management.

7. Lines 153-160 address signatory parties. This is the same question we spoken to in our first comment above. Both the Colville Confederated Tribes, as a land manager like the Lead Federal Agencies, and the CCT THPO with regulatory jurisdiction over project lands like the SHPOs, should be signatory parties to the PA.

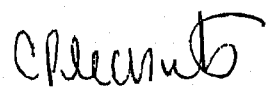
8. Lines 238-245 discuss selection of sites for treatment actions. Line 241 modifies the intent of the National Historic Preservation Act and 36 CFR 800 by requiring that not only do sites have to meet the National Register Criteria for inclusion on the National Register, but that significant information must also be "new" for a site to be eligible for treatment. Please remove this subjective and undefined modifier.

   Line 243 adds property ownership as a criterion for treatment; please remove this undefined and non-scaled requirement. Technically, if lands are being adversely impacted by the undertaking, isn't the appropriate agency required to own the land or have an easement on the property in question?

9. Line 349, change "SHPO" to "SHPO/THPO".

Thank you for taking time to review these comments. It is becoming clearer why the 1997 PA was never finalized. We desire the PA to be a signed and functional document. Hard decisions are going to have to be made. We are prepared to come to the table to resolve these issues in a cooperative manner. If there is some way we can be of assistance or if you need to discuss management issues, please contact me at (509) 634-2654. If you have any technical questions related to our comments, please contact Guy Moura, TCP Coordinator, at (509) 634-2695.

Sincerely,



Camille Pleasants
Tribal Historic Preservation Officer

cc: Harvey Moses, Jr. – CBC Chairman
Deb Louie. – CBC Culture Committee Chair
John Sirois – Cultural Preservation Administrator
Guy Moura – TCP Coordinator
John Pouley – Field Director
3109 Contract Binder
Chrono

Cultural Resources Management Program
P.O. Box 408 / 850 A. Street
Plummer, Idaho 83851
208-686-0675 fx 208-686-1901
Date: 1-13-2006

Mr. Steve Tromly, Cultural Resource Manager
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

Dear Mr. Tromly,

Please find noted below the Coeur d'Alene Tribe Cultural Resource Staff comments on the FCRPS Draft PA for Cultural Resources, KEC-4

Sincerely,

Quanah Matheson, Program Manager
Cultural Resource Management Program
Coeur d'Alene Tribe
P.O. Box 408
Plummer, Idaho 83851

cc: CRMP Chrono File
Project File

Coeur d'Alene Tribe Comments January 2006
FCRPS Draft PA for Cultural Resources KEC-4

FCRPS DRAFT (10/21/05) Programmatic Agreement among the U.S. Army Corps of Engineers, Northwestern Division, Bureau of Reclamation, Pacific Northwest Region, Bonneville Power Administration and The advisory Council on Historic Preservation and Other Signatory Parties Regarding Historic Properties Affected by the Multi-Purpose Operations of the Fourteen Projects of the Federal Columbia River Power System for Compliance with Section 106 of the National Historic Preservation Act

INTRODUCTION:
The wording is convoluted and confusing. Needs to be rewritten for clarity.

STIPULATION 8
Points A (specifically lines 504-507) and D (lines 539-541)

All the control for contacting the ACHP lies with the Lead Federal Agencies even to the point of having the ACHP and SHPO/THPO offices refer contacts back to the Lead Agencies when contacted directly by the public or consulting parties. What is the justification for this? When does the cycle end?

STIPULATION 13
Lines 636-638

Recommend adding the words "tribal sovereignty" to the list of things not diminished by this PA.

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. Box 278
Pablo, Montana 59855
(406) 275-2700
FAX (406) 275-2806
E-mail: csktcouncil@cskt.org

Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Leon Bourdon - Sergeant-at-Arms

RECEIVED BY BPA
ADMINISTRATOR'S
OFC-LOG #: Co-0015
RECEIPT DATE: 1.30.06
DUE DATE: Info Only

TRIBAL COUNCIL MEMBERS:
D. Fred Matt - Chairman
Jami Hamel - Vice Chair
Carole Lankford - Secretary
Joel Clairmont - Treasurer
Lloyd D. Irvine
Mike Kenmille
Mary Lefthand
Elmer "Sonny" Morigeau
James Steele, Jr.
Ron Trahan

January 24, 2006

Stephen J. Wright, Administrator
Bonneville Power Administration
905 N.E. 11th Avenue
Portland, OR 97232

Randall L. Fofi, Colonel
Deputy Division Engineer
Northwestern Division
U. S. Army Corps of Engineers
P.O. Box 2870
Portland, OR 97208-2870

INFO ONLY: Sonya Tetnowski-DKT-7
cc: FO3, DKN/Wash, L-7, KE/KEW-4,
Hope Ross-KEC/Spokane

RE: FCRPS Programmatic Agreement

Dear Mr. Wright and Colonel Fofi,

Thank you for providing the Confederated Salish and Kootenai Tribes the opportunity to review and comment on the proposed Federal Columbia River Power System Programmatic Agreement (PA). We will address the general concerns first and the more specific concerns or questions will follow.

The first concern is that the current document does not reflect the past commitments BPA made to the tribes in the original Record of Decision, and BPA Tribal Policy Document of April 1996. The BPA Tribal Policy Document states that Tribal values will be recognized, respected and incorporated into the decision making process. However, there is no recognition of Tribes' unique status and role in the draft PA. The majority of the site types documented within the multiple project areas are directly associated with the various Tribes within the Columbia River Basin. Tribes' treaties and executive orders ensure access and use under Federal Laws. The Federal agencies involved with the FCRPS have trustee responsibilities to the various Tribes.

The Consultation clause in the NHPA Section 106 800.2 (a)(4) is not addressed in this document. This is a serious omission. The draft PA document relegates Tribal input to the project level to be voiced within the working groups. There is no direct tribal

access to the JOC on decisions that will affect the entire Columbia River system. A Consultation clause needs to be added that clearly defines how consultation will be accomplished at the government-to-government level as well as how tribal values and concerns will reach the decision makers of the Federal agencies.

Resolution of adverse effects (800.6) is not addressed in this document. How do the federal agencies plan to mitigate the adverse effects the FCRPS activities have on eligible sites. Mitigation measures need to be creative and consider the Tribal communitys' loss of access to cultural sites in aboriginal or tribal lands. This subject needs to be dealt with and the responsible agencies identified. This PA is supposed to streamline the Section 106 process and facilitate a cooperative working relationship between the lead Federal Agencies. The responsibility and the plan for mitigation need to be identified as part of the Section 106 compliance process.

Why is the Section 110 responsibility not mentioned in this document? Section 110 is an equal responsibility along with Section 106 of the NPHA and ensures that historic properties are preserved, protected and considered in the general and specific management and budget plans of the agency. Under Section 110 neglect is considered an adverse impact to an historic property. This issue needs to be recognized and needs to be a focus within management plans. We understand that the BPA maintain they have no responsibility under Section 110 since they do not have land holdings, but the other agencies involved in this PA are land managers. Please clarify since BPA is an integral part of the JOC and the working groups and is part of the decision process for historic properties such as research designs, general themes for the FCRPS, and budget priorities.

Stipulation 2, A, Goal 1:

This section is trying to avoid the issue of cultural sites on private lands that are impacted by the project (see Stipulation 1 and Stipulation 2)—lines 218 to 224). It is a bit of a catch 22 when the non-Federal lands are considered as part of the APE **"where adverse effects occurring to historic properties have been determined or are determined in the future to be a result of the Federal undertaking."** This is problematic because the prior definition of the APE does not appear to support survey on non-Federal lands to determine these effects. Also, only an "appropriate authority" can bring this to the attention of the Federal agencies. The responsibility for survey, identification and evaluation lies with the lead federal agencies, for sites that may be impacted by project actions, not with the landowners who own land within the APE.

Also in this Section the PA calls for **"specific research designs for the technical investigations"** This is all very general are there examples or more guidance on this? How do Federal Traditional Cultural Properties (TCP) studies fit into this approach?

Stipulation 2, B Goal 2:

i. It appears that the baseline compliance status would be geared toward Criterion D. This eliminates other cultural resources, under Criteria A,B,andC, from being considered as a priority for funding.

iii Consultation with tribes needs to take place on the criteria for "means to measure and report progress".

iv. How will the system-wide research design be developed?

Line 292 what are TCP research domains? Who established these and what does this really mean to tribal people? Also research domains and themes will be established for the Pacific Northwest, some of the reservoirs are located in the Northern Rockies and not considered part of the Pacific Northwest.

In summary as stated earlier the discussion on research designs is too general and what is written here leads one to the conclusion that the approach is archaeologically structured and an archaeological perspective will dominate all future work. The archaeological approach will exclude other creative research on questions that address cultural sites under the A, B and C Criteria.

Stipulation 2, C, Goal 3:

Lines 313-321, First include the Northern Rockies with the Pacific Northwest. Second #ii, **"Promote use of the collections for educational and research purposes"** Tribal consultation needs to take place before collections are used for educational purposes. Second please add a clause to address review of the collections by tribes to separate culturally sensitive items that may need to be repatriated.

Stipulation 4, line 402-403. The "Cultural Resources Subcommittee" description should be also in the definition sections, same for Cooperating Groups, line 430.

The general approach for reporting and data recovery, **Stipulation 5. Annual Progress Reporting,** (page 11) is clearly designed for Criterion D of Section 106. This has been the standard adhered to and funded since the early 1970's. The results have been unfinished and lost reports for prior excavations and fieldwork. A multitude of artifact collections have been excavated in the past. Curation facilities (space) and funding for these collections is an ongoing issue. Also, collections need to be analyzed and a synthesis prepared before there is a justification to dig up more material. Finally, the criteria for the annual progress reporting will result in a skewed database omitting cultural sites that would be eligible under Criteria A, B, and C, such as TCPs.

Comment number 69, calls for the establishment of a "Scientific Peer Review Panel" to review and comment on research designs. This is a step backward to the archaeological status quo that has been the emphasis for the last 25 years. Excavation as a mitigation measure has been an ongoing concern for the Tribes. The CSKT's position is that data recovery as it relates to Criterion "D" has been the focus of management and mitigation for over 25 years, but these methods have not contributed substantially to the protection or preservation of Tribal heritage sites. Numerous sites continue to be eroded and destroyed without any form of treatment. Formal archeological reports produced from these "data recovery" efforts are highly technical and there is a backlog of work that has not been written up. The technical reports do not provide or substitute cultural value to the Kootenai community and traditional leaders who have suffered the greatest loss to their history and heritage sites. In fact excavations have added to the cultural impact and

sense of loss because they are considered culturally inappropriate and, from a traditional perspective, could threaten the health and welfare of the community.

The Tribes' position is that it is time to prioritize measures other than excavation to mitigate losses from the Project, measures such as site protection, stabilization, off site mitigation and programs that bring something of value back to the Tribal community. At the very least, excavation should not be undertaken without consideration of the impacts of those activities on tribal traditional values and the cultural integrity of each site under criteria A, B and C of the National Historic Preservation Act. Can we please begin to think outside the Criterion D Box? That is what a PA is designed to do, but this PA does not demonstrate or suggest any new approaches or creative thinking. In fact the only deviation from the NHPA Section 106 are numerous omissions, which we are not comfortable with.

In conclusion, we appreciate the opportunity to review and comment on this draft PA for the Federal Columbia River Power System. We realize that there has been a lot of time and effort in drafting this document, but we have serious misgivings that a PA is the mechanism needed to measure progress and compliance with the NHPA Section 106 regulations or the ability to streamline the process. We hope you will seriously consider our comments and incorporate them into the next draft of the PA. If you have any questions or wish to discuss this topic further please contact Marcia Pablo, Tribal Preservation Officer at (406) 675-2700.

Sincerely,

JAMES H. STEELE JR.
Tribal Chairman,
CSKT Council

Cc: Steve Tromly, BPA Cultural Resource Manager
Sonya M. Tetnowski, BPA Tribal Affairs Officer
Hope Ross, BPA
Robert A. Brunoe, Tribal Historic Preservation Office
Johnson Meninick, Yakama Nation, Cultural Resource Manager
Teara Farrow, CTUIR, Cultural Resource Manager
Catherine Dickson, CTUIR, Principal Investigator
Carey Miller, CTIUR, THPO
Vera Sonneck, Nez Perce Tribe, Cultural Resource Manager
Kevin Cannel, Nez Perce Tribe, THPO
Rex Buck, Wanapum Band
Camille Pleasants, Colville Confederated Tribes

Randy Abrahamson, Spokane Tribe
Kevin Lyons, Kalispell
Dennis Griffin, Oregon State Historic Preservation Office
Robert Whitlam, Washington Department of Archaeology and Historic Preservation
Stan Wilmoth, Montana State Historic Preservation Office
Suzie Neitzel, Idaho State Historic Preservation Office
Tom McCulloch, Advisory Council on Historic Preservation
Randall L. Fofi, COL., Commander USACE Northwestern Division
Direlle Calica, Native American Liaison, USACE Northwestern Division
Gail Clemer, USACE Northwest Division
Stephen Oliver, Bonneville Power Administration
Lynn MacDonald, U.S. Bureau of Reclamation
Chuck James, Area Archaeologist, Bureau of Indian Affairs

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

December 14, 2005

Steve Tromly, Cultural Resource Manager
Bonneville Power Administration
Post Office Box 3621
Portland, Oregon 97208-3621

Dear Steve:

The Confederated Tribes of the Umatilla Indian Reservation Cultural Resources Protection Program (CRPP) has received the October 31st version of the Federal Columbia River Power System's programmatic agreement to address the adverse effects of multipurpose operations of the 14 projects. The concerns raised by the CRPP in the first circulation of this document were not addressed to our satisfaction.

To ensure effective consultation, I request a meeting with you and your appropriate counterparts from the other agency/agencies to discuss the CRPP's concerns in detail. In addition, I request copies of all comments and responses. The table provided in the October 31st letter from Stephen Oliver, David Lyngholm, and Randall Fofi cuts off some of the comments and possibly some of the responses.

It is my understanding that all Historic Preservation Officers with responsibilities for property within the area of potential effect must be signatory parties to this programmatic agreement. Therefore, the CTUIR must be added to the signatory parties as our Tribal Historic Preservation Office is responsible for reviewing undertakings on land held in trust for the CTUIR, which includes in lieu treaty fishing sites and in lieu treaty fishing access sites.

It may be in the lead federal agencies' best interest to organize meetings with all signatory parties sitting down together to discuss ways to improve the programmatic agreement. Please contact me at your convenience to schedule a meeting to further the consultation process.

Respectfully,

Teara Farrow

Teara Farrow
Program Manager

cc: Johnson Meninick, Yakama Nation
Vera Sonneck, Nez Perce Tribe
Camille Pleasants, Confederated Colville Tribes

Sally Bird, Confederated Tribes of Warm Springs Reservation of Oregon
Dave Schwab, Confederated Salish and Kootenai Tribes of the Flathead Reservation
Kevin Lyons, Kalispel Tribe of Indians
Randy Abrahamson, Spokane Tribe of Indians
John Hartman, Coeur d'Alene Tribe
Josephine Shottanana, Kootenai Tribe of Idaho
Rex Buck, Wanapum Band
Chuck James, BIA
Stephen Oliver, BPA
Sonya Tetnowski, BPA
Bob Shank, BPA
Lynne MacDonald, Bureau of Reclamation
David Lyngholm, Bureau of Reclamation
Randall L. Fofi, Corps of Engineers
Gail Celmer, Corps of Engineers
Direlle R. Calica, Corps of Engineers
Robert 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

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

Cultural Resources Department

Phone: 541/553-2006 Fax: 541/553-3584

Warm Springs, Oregon 97761 / 541 553-1161

January 17, 2006

Steve Tromly
Cultural Resource Manager
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

Dear Steve:

This letter is in response to the DRAFT Federal Columbia River Power System (FCRPS) Programmatic Agreement (PA) request for comments. It is apparent that the three federal agencies have been working on the PA and I would like to commend you all on the effort; however, the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO) Cultural Resources Department (CRD) has a concern with the intent of the FCRPS in producing this PA in the manner in which it is written.

After careful review of the PA and the National Historic Preservation Act (NHPA) 36 CFR 800 the CRD finds itself concerned with the level of information within the FCRPS PA. Under the Draft PA line 169-174 **NOW THEREFORE** statement it appears that the PA is attempting to be the compliance document for section 106 and the CRD does not believe that is the intent of the NHPA.

Under 36 CFR 800 § 800.2(a) it is the *statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance.* There is no need for a PA to comply with this. The intent of a FCRPS applicable PA; however, is clear under 36 CFR 800 § 800.14(b)(1)(i), which indicates that a PA may be used *when effects on historic properties are similar and repetitive or are multi-State or regional in scope.* The FCRPS clearly falls under this section of the NHPA with the multi-state component; however a system wide PA should include those stipulations that are pertinent to the project as a whole. Such as the roles and responsibilities of the federal agencies with jurisdiction over the undertaking; legal and financial responsibilities for the section 106 compliance of the undertaking; where the funding is coming from; how it is dispersed and the responsibilities of the federal agencies to those funds. The roles of signatory parties should be defined and included in the decision making process of the FCRPS as an undertaking that will affect those parties. Stipulation 4 of the PA implies that the Cultural Resources Subcommittee, which is comprised of the three federal agencies technical representatives, will determine how best to run the FCRPS cultural resource program. This is contrary to 36 CFR 800 § 800.14(b)(iii) where the three agencies have effectively excluded those signatory parties affected by the FCRPS project; such as state and tribal Historic Preservation Programs, Bureau of Indian Affairs who oversees tribal trust lands within the FCRPS, U.S. Department of Agriculture, Forest Service, whom who also manages lands within the area of potential affect.

The CTWSRO CRD feels that it would be beneficial to the FCRPS process to have a meeting with all affected parties to discuss the intent, roles, and definitions of this PA and to work through the document in a meaningful productive manner. It seems reasonable to have these meeting at the proposed 2006 FCRPS conference in Seattle, Washington, especially since the Advisory Council on Historic Preservation will be in attendance. If this is not acceptable to the Bonneville Power Administration, the Bureau of Reclamation, and the U.S. Army Corps of Engineers the

CTWSRO will have no choice but to initiate consultation with the two federal agencies with jurisdiction within the CTWSRO's ceded territory and usual and accustomed lands.

It should also be noted that the CTWSRO has a Tribal Historic Preservation Officer with responsibilities on trust lands within the FCRPS area of potential effect, therefore, the CTWSRO Tribal Historic Preservation Officer should be added to the signatory party list for this PA.

Respectfully,

Sally Bird
CTWSRO Cultural Resource Manager

cc: Robert A. Brunoe, Tribal Historic Preservation Office
Johnson Meninick, Yakama Nation, Cultural Resource Manager
Teara Farrow, CTUIR, Cultural Resource Manager
Catherine Dickson, CTUIR, Principal Investigator
Carey Miller, CTUIR, THPO
Vera Sonneck, Nez Perce Tribe, Cultural Resource Manager
Kevin Cannel, Nez Perce Tribe, THPO
Rex Buck, Wanapum Band
Camille Pleasants, Colville Confederated Tribes
Marcia Pablo, Confederated Salish and Kootenai Tribes
Randy Abrahamson, Spokane Tribe
Kevin Lyons, Kalispell
Dennis Griffin, Oregon State Historic Preservation Office
Robert Whitlam, Washington Department of Archaeology and Historic Preservation
Stan Wilmoth, Montana State Historic Preservation Office
Suzie Neitzel, Idaho State Historic Preservation Office
Tom McCulloch, Advisory Council on Historic Preservation
Randall L. Fofi, Col., Commander USACE Northwestern Division
Direlle Calica, Native American Liaison, USACE Northwest Division
Gail Celmer, USACE Northwest Division
Stephen Oliver, Bonneville Power Administration
Sonya Tetnowski, Bonneville Power Administration
Lynn MacDonald, U.S. Bureau of Reclamation
Chuck James, Area Archaeologist, Bureau of Indian Affairs

Nez Perce

TRIBAL EXECUTIVE COMMITTEE
P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

December 27, 2005

Stephen J. Wright, Administrator
Bonneville Power Administration
905 N.E. 11th Avenue
Portland, OR 97232

Randall L. Fofi, Colonel
Deputy Division Engineer
Northwestern Division
U.S. Army Corps of Engineers
P.O. Box 2870
Portland, OR 97208-2870

RE: FCRPS Programmatic Agreement

Dear Mr. Wright and Colonel Fofi:

Thank you for providing a review copy of the Federal Columbia River Power System Programmatic Agreement (PA). It is definitely a sign of progress that the federal agencies were able to provide a definition of the federal undertaking and the area of potential effect. We will provide our general comments on the PA followed by our specific comments. Some of our comments are derived from reading the Missouri River Programmatic Agreement which is probably the closest analogy to the agreement proposed for the FCRPS.

Our main concern with the PA is that it needs to better explain why a PA is necessary. It states that the agencies would like to "streamline the implementation of the FCRPS historic properties management program" but the Tribe is unsure of what this is or how executing a PA will accomplish this.

In order for us to sign the PA we would appreciate it if our comments were incorporated and our questions addressed. It would be useful if your technical staff could meet with staff from our Cultural Resource Program to discuss the PA and the tribe's comments and concerns. The following are our general comments and concerns followed by specific comments with line references.

- The agreement does not incorporate all of the tribes as signatories. At the outset of the process in 1997, BPA committed to working cooperatively with the tribes. Based on statements made by Jack Robertson to the assembled tribes on January 29, 1997 we were expecting a much greater role for the tribes in the process of drafting and executing the PA. Page 25 of BPA's Record of Decision states that the PA will be completed "in full cooperation with affected tribes." If the PA is to be completed "in full cooperation" then all of the tribes should be signatory parties. Draft agreements circulated by BPA in 1997 incorporate all of the tribes as signatories. Has BPA's view of the FCRPS changed with respect to cooperating with the tribes?

  Currently, three tribes are listed as signatories, and that is only by necessity. However, if the agencies wish to strictly interpret the section 106 regulations, tribes that have trust lands affected by the undertaking should also be signatories. Since the in-lieu treaty fishing access sites and in-lieu treaty fishing sites are trust property additional signatories should include the Confederated Tribes of the Warm Springs Reservation, Confederated Tribes and Bands of the Yakama Nation, and the Confederated Tribes of the Umatilla Indian Reservation in addition to the three tribes incorporated as signatories already. In addition, the Nez Perce Tribe should then have two signatory lines, one for the THPO for the portion of the project affecting reservation lands, and one for the NPTEC Chairman for the portion of the project off of the reservation.

- The introduction should not be incorporated as part of the actual agreement. The Missouri PA incorporates a preamble, but not as part of the actual agreement. In addition, the introduction provided is apparently the history of the process according to the federal agency representatives and does not seem entirely consistent with the Nez Perce Tribe's understanding.

- The PA should have a stipulation regarding tribal involvement in the process.

- What are the titles of the agency officials for this agreement with regard to 36 CFR 800.2(a)? Presumably these officials will be the same with regard to the project specific agreements to follow.

Specific Comments

line	comment
16	Identify other signatory parties by name. Or conversely just list Lead Federal Agencies.
40	Since the Nez Perce Tribe is not a signatory to the IDU PA, the statement that all of the affected parties signed the IDU PA is not accurate. However, since the Nez Perce Tribe does have a Tribal Historic Preservation Officer (THPO), the THPO has assumed the interest of the SHPO with regard to that portion of the reservation affected by the IDU PA (36 CFR 800.14(b)(2)(iii).

40-41	The IDU PA did not affect the entire FCRPS. It only addressed five storage reservoirs. Commitments made by BPA in the IDU PA have not been completely realized or implemented consistently.
145	The introduction states that the PA is specific to section 106. However, this 'whereas' seems to contradict that. Again, please remove the introduction from the agreement.
149	Please provide a precise description of how the PA will streamline the program.
169-174	This seems to indicate that the undertaking is the FCRPS program.
194-197	This entire statement is inconsistent with federal regulations (36 CFR 800) and is inconsistent with the definition of the area of potential effect (APE) on page 23 (lines 848-852). If the potential exists for an undertaking to affect sites in an area, then that area is part of the APE. Determination (line 197) is inconsistent with the federal regulations and is not necessary for an area to be included in the APE. The regulations (36 CFR 800) states that "The area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." It does not state that the presence of an adverse effect must be documented first. That step is later in the section 106 process.
208-209	Goals 1 and 2 should be completed in full cooperation with the tribes. Are these goals consistent with the Records of Decision and BPA's commitment to the tribes regarding funding of the FCRPS program?
229	Please add "in full cooperation with the tribes" to the end of this sentence.
238-243	Please add as statement to the effect that all adverse effects to historic properties will be mitigated in compliance with 36 CFR 800.
243-244	Who will prioritize sites? Given BPA and Corps' commitment to working in full cooperation with the tribes, the Nez Perce Tribe expects that this will be the reservoir workgroups.
249	Please define which technical investigations will require research designs. Also, please identify the funds that will be used for this purpose. The Tribe continues to be concerned that funds that are to be used to implement projects on the ground are being used for other purposes.
270-273	In order to tacitly concur with the use of the 'handbook' referenced here, the Nez Tribe needs to actually review the handbook.

290	The Nez Perce Tribe Cultural Resource Program is not familiar with the BLM's Interior Columbia Basin Ecosystem Management Plan. Please provide a copy of the plan to our THPO for review.
310	What are the 'scientific communities' referenced here? How do they differ from the general public with regard to 36 CFR 800? Any party may request to become involved in the section 106 process. Have any 'scientific communities' made such a request?
317-319	How will the interpretation defined here be funded? Again, the Tribe is concerned that funding that is supposed to be used to implement projects on the ground is being used for other purposes. The Tribe thought this was the role of the reservoir cooperative groups.
375	Delete word "a", 7th word.
373	The reservoir cooperative groups should decide when an updated HPMP is necessary.
387	The lead federal agencies are already part of the reservoir cooperative groups. Please delete the first part of the sentence.
405	The Cultural Resource Subcommittee functions in a vacuum with no tribal involvement. At the outset of the process in 1997 the tribes were concerned about the agencies conducting meetings in secret without tribal involvement and the Tribe continues to be concerned about the lack of cooperation evident in the CRSC holding meetings in private in a process that is supposed to involve the full cooperation of all of the parties.
420	How will the JOC consult with the tribes? Decisions are being made by the JOC that affect the workgroups and thus the Tribes with no consultation.
450-452	Existing Corps' policy states that "because the focus of this effort is to preserve and protect significant cultural properties that are located on lands under Corps jurisdiction…the decision making function must reside with the District Commander." (p.3). This seems to contradict the statement that the lead federal agencies together have the final decision making authority?
425-452	This section should emphasize that Corps' policy states that "The Co-op Groups were designed to serve as the focal point for coordination and information exchange associated with the cultural properties management program." We assume this includes interagency communication to a high degree. What is the logic behind one group in Portland District, one in Walla Walla, and five to the north?

596 Thirty years is too long for a PA that only has a funding commitment expected to last until 2012. If the agencies agree to commit funding for thirty years then perhaps this should be considered.

In conclusion we appreciate the effort the agencies have gone through to draft the PA. While we feel that cooperation within the workgroups has lately improved, we feel that greater cooperation could have been had in drafting the PA. Please contact the Nez Perce Tribe's THPO Mr. Kevin Cannell at (208) 843-7400 in order to arrange a meeting to discuss these issues. It would also be helpful if the agencies supplied all of the comments received regarding the draft PA.

Sincerely,

Rebecca A. Miles
Chairman

cc: Tom McCulloch, Advisory Concil on Historic Preservation
Valerie Hauser, Advisory Council on Historic Preservation
Allyson Brooks, Washington SHPO
Susan Neitzel, Idaho Deputy SHPO
James Hamrick, Oregon Deputy SHPO
Steve Tromly, BPA Cultural Resource Manager
Gail Celmer, COE Regional Archaeologist
Lynne MacDonald, Bureau of Reclamation
Chuck James, Bureau of Indian Affairs
Teara Farrow, Confederated Tribes of the Umatilla Indian Reservation
Sally Bird, Confederated Tribes of the Warm Springs Reservation
Johnson Meninick, Confederated Tribes and Bands of the Yakama Nation
Rex Buck, Wanapum Band
Camille Pleasants, Colville Confederated Tribes
Marcia Pablo, Confederated Salish and Kootenai Tribes
Randy Abrahamson, Spokane Tribe
Kevin Lyons, Kalispell Tribe
Vera Sonneck, Nez Perce Tribe
Kevin Cannell, Nez Perce Tribe
Ryan Sudbury, Nez Perce Tribe

Celmer, Gail C NWP

From: Randy Abrahamson [mailto:randya@spokanetribe.com]
Sent: Thursday, December 29, 2005 2:19 PM
To: Tromly,Stephen C - KEC
Subject: CorrespondencereCorpsPA.01

Spokane Tribe of Indians

OFFICE OF THE SPOKANE TRIBAL ATTORNEY
P.O. BOX 100 Wellpinit, WA 99040
(509) 458-7550/FX (509) 458-3553

December 28, 2005

Mr. Randy Abrahamson
Spokane Tribal Historic Preservation Officer

RE: Programmatic Agreement Among the U.S. Army Corps of Engineers, Bureau of Reclamation, Bonneville Power Administration, and the Advisory Council on Historic Preservation Regarding the Management of Historic Properties Affected by the Multi-Purpose Operations of the Fourteen Projects of the Federal Columbia River Power System.

Dear Randy:

I have reviewed the above-mentioned Programmatic Agreement ("PA"). It is my understanding that you will forward this correspondence to appropriate officials from the respective federal and Tribal agencies for review. The following are observations, concerns, and suggestions:

1. Nature of the PA. The PA is essentially an umbrella document that covers areas affected by 14 FCRPS Projects. The PA establishes a process for developing detailed, project-specific PA's in the future.

2. Duration of PA. Unless terminated in accordance with Stipulation 12 of the PA, its duration shall be thirty years (Stipulation 12). Because the PA will bind the signatory parties for such a long term, it is particularly important that the PA adequately protects the interests of the Tribe.

3. Property Affected by the PA. Stipulation 1 of the PA sets forth the geographic scope of the PA which "includes those lands either directly or indirectly affected by operation for all Project

purposes of the 12 Corps and two Reclamation Projects. This includes, within Project boundaries, both Federally-owned fee lands and other real property where the U.S. Government has a current and future interest, was well as non- Federal lands where there is a demonstrated adverse effect from Project purpose actions." This language can be construed to include lands held in trust by the federal government for Indian Tribes. It may be appropriate to include trust lands within this Stipulation, because historic sites located on trust lands could arguably benefit from additional protections afforded to historic sites under 16 U.S.C. §470h-2(2).[1] **Language should be included within this Stipulation acknowledging that trust lands within the geographic scope of the PA wil be subject to consultation procedures and approval requirements that will be included in Project-specific PA's prior to federal actions being taken that affect such lands. Language should also be included to require consultation procedures and approval requirements prior to federal action being taken that effect any lands located within "Indian Country" as that term is defined in 18 U.S.C. § 1151.**

4. The Cultural Resources Subcommittee. Stipulation 4. A. establishes a Cultural Resource Subcommittee ("CRSC"). As currently drafted, there is no t ribal representation on the CRSC. **Language should be included within this Stipulation that provides for Tribal representation on the CRSC. Affected Tribes may want to caucus to discuss how Tribal representation on the CRSC would occur (e.g. a Tribal delegate designated by the Tribes to serve a one year term).**

5. Language Protected Rights Reserved by Tribes under Executive Orders and Language Expressly Preserving Tribal Sovereign Immunity. Lines 424 – 426 contain the following language:

> [n]othing herein diminishes or affects tribal treaty rights, nor does it alter or affect any governmental authority, jurisdictional rights, or property boundaries of the States, any Indian tribe, other governmental agency or entity, nor does it affect the property rights of land owners.

I recommend this paragraph be amended as follows:

Nothing herein diminishes or affects Tribal treaty rights or rights reserved by Tribes under Executive Orders, nor does it alter or affect any governmental authority, jurisdictional rights, or property boundaries of the States, any Indian Tribe, or other governmental agency or entity, nor does it affect the property rights of land owners. Nothing herein shall be c onstrued as a waiver of sovereign immunity by any Tribe joining this Agreement.

Please contact me if you have any questions.

Sincerely,

Scott Wheat, for
Office of the Spokane Tribal Attorney

---

[1] 16 U.S.C. 470h-2(2) may not apply to trust land or, more generally, to "Indian Country" as that term is defined in 18 U.S.C. § 1151, because such lands are not under the "jurisdiction or control" of any federal agency.

Confederated Tribes and Bands
of the Yakama Nation
Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

Established by the
Treaty of June 9, 1855

Steve Tromley
Bonneville Power Administration
PO Box 3621
Portland, OR 97208-3621

January 17, 2005

Subject: Draft FCRPS Programmatic Agreement.

Mr. Tromly,

Thank you for the opportunity to again comment on the FCRPS Draft Programmatic Agreement. Our comments are encompassed in the following table. The table addresses the consolidated comments from the 3/02/05 PA draft and further comments follow.

Consolidated comments from the 3/02/05 PA draft.

Comment Number	Comment
6, 14, 25, 45	Within these comments it is stated by the Federal Agencies that the PA is not a funding document. Under stipulation 4 of the PA the Cultural Resource Subcommittee is charged with recommending to the JOC annual funding for system wide and project level implementation. Please clarify how the PA is not involved with funding.
24	Qualifications for signatory parties ignore the Treaty Reserved Rights of the Confederated Tribes and Bands of the Yakama Nation (YN). We request that the Federal Agencies adhere to their Trust Responsibility to the YN and acknowledge our Treaty Reserved Rights. Is it the intention of the Federal Agencies to redefine the nature of the FCRPS working groups by marginalizing the legal base of the YN?
40	It is requested that the Affected Tribes need to be consulted when museum collections are studied. The Federal response does not address the request.
36, 74	The YN requests that the BPA and BOR comply with Section 110. The ACHP in comment 74 infers that all involved Federal Agencies have Section 110 responsibility, will the BPA and BOR continue to deny they Section 110 responsibilities?

Confederated Tribes and Bands
of the Yakama Nation
Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

Established by the
Treaty of June 9, 1855

Since the inception of the FCRPS working groups decisions have been made through a cooperative matter. This PA was developed unilaterally by the Federal Agencies. No input from the Tribes was sought during the initial development of the PA. The Tribes have only been allowed to comment. It is clear that the intention of the PA is to redefine the nature of the FCRPS working groups by moving away from a cooperative relationship and regressing back to a relationship of confrontation. We are disturbed that this is being done in coordination with the Federal Agencies new policy of no longer contracting on a sole source basis to the Tribes. Personalities within the Federal Agencies are single handedly destroying the past work done by Tribal and Federal representatives. These representatives created a situation in which the Tribes and Federal agents could sit and speak to each other as equals; we hope that someday the federal agencies will like to return to this relationship.

Respectfully,

Johnson Meninick: Cultural Resource Program Manager

CC: YN CRP Staff
YN Cultural Committee
YN Legal Staff
Allyson Brooks, WA SHPO

USFS Region 1

Celmer, Gail C NWP

From: Becky Timmons [btimmons@fs.fed.us]
Sent: Thursday, January 19, 2006 10:19 AM
To: Celmer, Gail C NWP
Cc: Timothy Light; Rice, David G NWS; Mike Beckes
Subject: Re: Sytem-wide FCRPS PA

Gail, thank you. We would like to request two changes. Eliminate the sentence on page 5..."and where the U.S. Forest Service chose instead to sign as concurring party". And delete U.S. Forest Service, Region 1 from Concurring Parties on page 17 and put it on page 16 under Signatories. We will run this by our Agreements Specialist and let you know if he has any additional changes.

Rebecca S. Timmons
Forest Archaeologist
Kootenai National Forest
1101 U.S. Highway 2 West
Libby, MT 59923
406-283-7666
FAX 406-283-7709

Oregon
Theodore R. Kulongoski, Governor

Parks and Recreation Department
Heritage Conservation Division
725 Summer St. NE, Suite C
Salem, OR 97301-1271
(503) 986-0707
FAX (503) 986-0793
www.hcd.state.or.us

25 November 2005

Steve Tromly
Bonneville Power Administration
P.O. Box 3621
Portland OR 97208-3621

Re: FCRPS Draft PA

Dear Steve,

We have reviewed the draft Federal Columbia River Power System (FCRPS) Programmatic Agreement (PA) and are left wondering what the purpose of this PA is. The draft PA provides laudable goals (e.g., to address all ongoing and reasonably foreseeable future adverse effects) that will be hopefully addressed through future substantive PAs over a potentially lengthy period of time. The draft PA states that it is intended to streamline the 106 process but no details regarding how such a streamlining will be accomplished is mentioned. We find that the draft PA offers no real substance, aside from acknowledging willingness for the Lead Federal agencies and signatories to agree to work in the future and directs the signatories to await future PA development. We feel that Programmatic Agreements, first and foremost, should be based on specific needs that are clearly defined. What is the known basis for such an agreement to be signed, what conditions will be met by signatories, and how will these conditions be substantiated/validated? Each of these components is missing in the current draft PA.

Our specific review comments are listed below:

Line	Page	Comment
9-105	1-2	An introduction has no place in a PA. This should be removed or attached as a cover letter.
149	4	Streamlining 106 process mentioned but no particulars as to how such a process may work. How do the lead Federal agencies see the 106 process being streamlined?
192-199	5-6	Stipulation states that federal agencies acknowledge impact of projects on non-fee lands and that actions on non-Federal lands will only be implemented with approval of title holder. While we agree that this should be the case, in the Bonneville area the Corps has no idea what lands are truly fee-owned and which are privately owned. This has been a topic of conversation among the working group since the conception of the SOR and no action has yet been taken. Our office knows of no attempts by the Corps to ask titleholders to have cultural resource surveys of their lands ever done or protect cultural resources that are known to be affected on their property.
222	6	Non-Federal lands will be addressed on a case-by-case basis <u>to the extent</u>

		possible. Historically this has meant that no non-fee lands are addressed or even considered. Are the Federal agencies suggesting a change in how things are going to be addressed in the future? Does this approach have any likelihood of being implemented?
224-225	7	We agree that the widest range of treatment options should be considered for diverse property types but details or examples should be included here.
250	7	vi: Require specific research designs for technical investigations. This sounds great but the lead Federal agencies that our office has dealt with in the past (Corps, BPA) have never required specific research designs in the past. Is this to be a new change in how future work will be approached?
270	7	Handbook for federal agencies that describes communication and coordination protocols, defines processes used to implement HP program and report progress. Oregon SHPO would like to obtain a copy of such a document.
290	8	We are not familiar with the BLM's Interior Columbia Basin Ecosystem Management Plan. We will have to try and obtain a copy to see how the BLM addresses this concept.
292	8	We are interested in seeing how the lead Federal agencies propose to address Traditional Cultural Properties. This has been a hot topic among the various agencies and tribes lately and our office has seen no real FCRPS statement regarding addressing or identifying such properties.
304	8	Add 'd' to outline: statement should read "variety of factors as outlined above".
350-352	9	With the stated objective to streamline Section 106 consultations, how do the lead federal agencies see such a process being implemented? Exactly what part of the process do you see as being streamlined and in what way will this make the process easier for all agencies involved?
373	9	Project-specific HPMP. Existing HPMPs are general in nature and restricted as to what can be done given current funding limitations. If agencies must prioritize what portion of sites on fee-owned lands can be examined, how can the PA suggest that non-fee-owned lands will be considered?
397-	10	System-wide Coordination –While the PA states that each working group will meet at least quarterly, what is the mechanism for a true exchange of ideas between working groups and what degree of accountability to implement changes addressed through these exchanges is there? Current annual FCRPS meeting provides little exchange of information between groups.
523	13	30 day review period by ACHP or automatic concurrence assumed of Federal agencies proposal. Given that the ACHP has just closed their Denver office is this 30-day review period still a viable option that should be supported in the PA? Being that the draft PA lacks any substantive issues or details, is a review period even applicable here?
545	13	Disputes at the project level shall not be the basis for termination of the

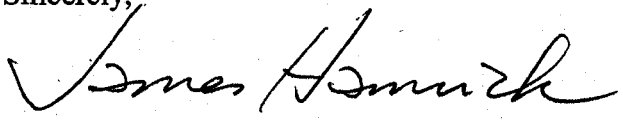
system-wide PA. Given that the system-wide PA lacks any detail or substance, I see no reason to even have such a PA and instead believe that agencies should focus on the Project-specific agreements.

596 14 30 years appears to be a long time for any PA to be left in place; even one that lacks any real substance such as this one. I would suggest a 5-year review of a 15-year (max) PA. The consultation and dispute resolution processes have not been attempted and it is likely that agencies will simply opt out of their project specific agreements rather than be tied down with a vague 30 year old document if they are not happy with the implementation of their specific project aspects. The system-wide PA appears to be more a tool for federal agencies to cite than a document that will have any real credibility among the participating agencies.

In summary, I find that consideration of a system-wide PA is premature and believe that lead Federal agencies need to focus their efforts on designing project specific PAs. After the completion of project-specific PAs, agencies will have worked out many of the details and procedures for cultural/historic property management that need to be defined for the operation of any PA. Upon the completion of such project-specific PAs, the lead Federal agencies can see if a system-wide PA is even needed, and if so, addressed at this time. This issue has not been well substantiated in the current draft.

If you have any questions regarding any of the above comments or would like additional information from our office concerning our review, feel free to contact Dennis Griffin at (503) 986-0674.

Sincerely,



James M. Hamrick
Asst. Director for Heritage Conservation
Deputy State Historic Preservation Officer

cc. Gail Celmer, Corps
Roger Roper, SHPO
Dennis Griffin, SHPO

IDAHO STATE HISTORICAL SOCIETY
PRESERVING OUR HERITAGE
FOUNDED IN 1881

Our mission: to educate through the identification, preservation, and interpretation of Idaho's cultural heritage.

Dirk Kempthorne
Governor of Idaho

Steve Guerber
Executive Director

Administration
1109 Main Street, Suite 250
Boise, Idaho 83702-5642
Office: (208) 334-2682
Fax: (208) 334-2774

Archaeological Survey
210 Main Street
Boise, Idaho 83702-7264
Office: (208) 334-3847
Fax: (208) 334-2775

Capitol Education Center
Statehouse/P.O. Box 83720
Boise, Idaho 83720-0001
Office: (208) 334-5174

Historical Museum and Education Programs
610 North Julia Davis Drive
Boise, Idaho 83702-7695
Office: (208) 334-2120
Fax: (208) 334-4059

Historic Preservation Office
210 Main Street
Boise, Idaho 83702-7264
Office: (208) 334-3861
Fax: (208) 334-2775

Historic Sites Office
2445 Old Penitentiary Road
Boise, Idaho 83712-8254
Office: (208) 334-2844
Fax: (208) 334-3225

Library/Historical and Genealogical Collection
450 North Fourth Street
Boise, Idaho 83702-6027
Office: (208) 334-3356
Fax: (208) 334-3198

Oral History
450 North Fourth Street
Boise, Idaho 83702-6027
Office: (208) 334-3863
Fax: (208) 334-3198

Memberships and Outreach and Development
1109 Main Street, Suite 250
Boise, Idaho 83702-5642
Office: (208) 334-3986
Fax: (208) 334-2774

Publications
450 North Fourth Street
Boise, Idaho 83702-6027
Office: (208) 334-3428
Fax: (208) 334-3198

State Archives/Manuscripts
2205 Old Penitentiary Road
Boise, Idaho 83712-8250
Office: (208) 334-2620
Fax: (208) 334-2626

January 11, 2006

Mr. Steve Tromly
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

RE: Draft Programmatic Agreement for the FCRPS

Dear Steve:

Thank you for requesting our views on the draft Programmatic Agreement (PA) for Historic Preservation Review of the Federal Columbia River Power System (FCRPS). We appreciate the magnitude of this task, trying to develop a PA for such a large and complex undertaking, and remember well the difficulties encountered during the last attempt to develop a PA during the 1990s. Our comments are outlined below:

Introduction

There is a distinct possibility that this Introduction could become detached from the body of the PA in agency and tribal files over the life of the document. Therefore, all of the information presented here should be summarized in the Whereas clauses, i.e., the definition of "Lead Federal Agencies."

Whereas clauses

Line 58: Which reservoirs are the "storage" reservoirs?

Lines 149-151: It would be better stated that the goal of this PA is to provide a tool or mechanism to facilitate the development of project specific agreements and to assist the Lead Federal Agencies in complying with Section 106 and 36CFR800 for such a large, complex project. If "streamlining" is the goal, it will not be achieved through this agreement.

Stipulation 1. Area of Potential Effects

Lines 188-190: 36CFR800 and Section 301 of the National Historic Preservation Act define the area of potential effects as the "area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties...." The definition does not speak to identified or observed

effects, but to land where there is the potential for effects based on the nature and magnitude of the undertaking. As the projects all have the same similar elements, the APE can be described generally here (i.e., project facilities, reservoir margins, transmission lines, access roads, wildlife mitigation lands, etc.) and described specifically under each "Project-specific agreement."

In Idaho, BPA assists Tribes and the Idaho Department of Fish and Game in purchasing and managing wildlife mitigation lands. We consider these undertakings directly related to the FCRPS, and they need to be addressed under this PA. To date, Section 106 Review of these land purchases and management activities has been inconsistent and BPA has relied heavily on other entities to fulfill their Federal preservation responsibilities. The development of this PA and project specific PAs presents good opportunities to resolve these problems and standardize the process.

Lines 197-199: We are pleased to see that the Lead Federal Agencies are now going to make an effort to access non-Federal lands that are within the APE.

Stipulation 2. FCRPS System-wide Program Implementation Actions

Lines 217-227: (1) Why is the first priority for implementation the Federal fee lands? Such priorities should be established at the project-specific level. Moreover, efforts to date have focused on Federal lands. In many cases, future efforts should be redirected to focus on other lands–or more appropriately, on historic properties that are highly endangered regardless of land ownership. (2) Reference to "project boundaries" should be changed to "APE." (3) The phrase "to the extent possible" needs to be deleted. Limitations when working on non-Federal lands are covered with the clauses "When provided written notification by an appropriate authority" and "consistent with any constraints that might be posed by the land owner." The qualifying statement "to the extent possible" suggests to the reader that the Lead Federal Agencies are not fully committed to addressing effects on non-Federal lands.

Line 229: At the end of this sentence, "in consultation with the SHPOs, THPOs, and Tribes."

Line 233: All properties should be evaluated, not just those that are being affected or are potentially affected. Evaluations can be preliminary and presumed, but some level of evaluation needs to be made.

Line 238: This line should read: "...National Register-eligible or -listed properties..."

Line 239-245: Treatment must be first based on the National Register criteria under which a property has been determined eligible for listing. Also, discussion about treatment should include examples of potential mitigation measures for effects on historic buildings and structures (i.e., HABS/HAER documentation, adhering to the Secretary of the Interior's Standards for Rehabilitation, etc.). Unless

indicated otherwise, this PA and project specific PAs will apply to all historic properties, not just archaeological sites and traditional cultural properties.

Line 254: The CFR for the Secretary of the Interior's Professional Qualification Standards needs to be cited (36CFR61).

Line 275-293: This section should also describe how the Project-specific research designs will be linked to this system-wide research design.

Line 302: The first sentence should be revised to include National Register-listed properties.

Line 303-306: Again, treatment must be first based on the National Register criteria under which a property has been determined eligible for listing. Also, discussion about treatment should include examples of potential mitigation measures for effects on historic buildings and structures (i.e., HABS/HAER documentation, adhering to the Secretary of the Interior's Standards for Rehabilitation, etc.).

Stipulation 3. Project-specific Implementation Instruments

Line 336: What schedule?

Line 351-352: The objective should be to "improve" consultation, not to "streamline" it. The term "streamline" brings to mind terms such as "shortcut" or "eliminate." In our opinion, it is a term that has been overused and abused in Section 106 discussions over the past decade.

Stipulation 4. System-wide Coordination

Lines 414-422: Another function of the CRSC should be to consider issues brought forth from the Cooperating Groups and communicate to the Cooperating Groups issues under consideration by the CRSC. This provides a link between the CRSC and the Cooperating Groups, and hopefully more accurately describes how the CRSC operates.

Lines 430-448: Our office cannot attend all of the Cooperating Group meetings, but we still expect to be consulted and provided an opportunity to review documents, plans, reports, evaluations, etc. through the mail. This standard method of review should also be noted here.

Line 450: What is meant by contracting matters or fiduciary responsibilities are "generally" not within the scope of the Cooperating Groups? It seems like this statement will only compound and prolong the confusion and disagreement about the authority of the Cooperating Groups that has long plagued group discussions.

Stipulation 5. Annual Progress Reporting

Line 461: As the annual meeting has often taken place before the end of March, the due date for the annual report should be moved to March 1st. Five months should be long enough to produce the report.

Lines 463-465: The annual report should also include a summary of which reports have been completed and which are still outstanding. It does not matter how many acres have been surveyed or sites evaluated if the results are not documented in written form.

Stipulation 7. Advisory Council Participation

Line 485: The hyphen between "follow" and "on" should be deleted.

Stipulation 10. Withdrawal of Participation

Lines 574-575: It is stated here that "Withdrawal by a signatory SHPO/THPO shall only terminate application of the System-wide PA within the area of jurisdiction of the SHPO/THPO." With this in mind, will the System-wide PA go into effect if not all SHPOs/THPOs are willing to sign in the first place? Also, Lead Federal Agency withdrawal should be addressed here.

Stipulation II. Review and Duration

Lines 596-598: A duration of 30 years for any PA seems unrealistic. What is the basis for this time frame?

We appreciate your consideration of these issues. If you have any questions about our comments, please feel free to contact me at 208-334-3847, ext. 107.

Sincerely,

Susan Pengilly Neitzel

Susan Pengilly Neitzel
Deputy SHPO

STATE OF WASHINGTON

DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

1063 S. Capitol Way, Suite 106 • Olympia, Washington 98501
Mailing address: PO Box 48343 • Olympia, Washington 98504-8343
(360) 586-3065 • Fax Number (360) 586-3067 • Website: www.dahp.wa.gov

February 1, 2006

Mr. Stephen Tromly
Environment, Fish & Wildlife
Bonneville Power Administration
PO Box 3621
Portland, Oregon 97208-3621

Re: FCRPS Programmatic Agreement
Log No.: 032905-01-BPA

Dear Mr. Tromly:

Thank you for contacting our department. We have reviewed the draft Programmatic Agreement dated 10/21/05 for the Federal Columbia River Power System. We appreciate the effort that the joint BPA, BOR, and COE staff have undertaken to create this latest version. We also appreciate the effort that the participating parties have contributed to helping craft this document.

We recognize the PA goal is to represent the keystone agreement upon which specific Project agreements are based. In realizing that goal we understand that Project level agreements can address the particular circumstances of a given project, the needs of specific consulting parties, and the unique characteristics of the project operations, and their cultural resource needs.

Given this PA as the system wide agreement we believe additional consultation and discussion is needed to clearly define the role of the Cultural Resources Subcommittee (CRSC) created by Stipulation 4. We recommend the following points for the CRSC be considered:

- Provide information to the parties on the operations, specific meetings, agenda, and results of the CRSC.
- Detail the term of service for particular members of an agency to serve on the CRSC with staggered terms to allow for institutional continuity.
- Allow CRSC to provide peer review of specific FCRPS Projects.
- Undertake Project Specific Reviews every 5 years.
- Create a System Wide Five-Year Action Plan.
- Consider rotating two Ex Offico Members representing a State and a Tribal Government for a fixed period of time.
- Authorize the CRCS to obtain and utilize professional advisors as needed to address specific topics, resources, treatments or plans.

We would appreciate receiving any correspondence or comments from concerned tribes or other parties that you receive as you consult under the requirements of 36CFR800.4(a)(4).

These comments are based on the information available at the time of this review and on the behalf of the State Historic Preservation Officer in conformance with Section 106 of the National Historic Preservation Act and its implementing regulations 36CFR800.

Thank you for the opportunity to comment and we look forward to the next version of the PA.

Sincerely,

Robert G. Whitlam, Ph.D.
State Archaeologist
(360) 586-3080
email: rob.whitlam@dahp.wa.gov

Advisory Council Comments 5/25/06

TMc thoughts on proposed Programmatic Agreement among the Corps of Engineers, Bureau of Reclamation, Bonneville Power Administration, the ACHP, the SHPOs of WA, OR, ID, and MT, etc., for the management of historic properties affected by the multipurpose operations of the 14 projects of the FCRPS pursuant to Section 106 of the NHPA.

I. Principles for development of PAs:

1. A single master Programmatic Agreement setting forth those elements, standards, requirements, obligations, goals, and formats common to all 14 project-specific PAs is a useful tool. It will provide consistency in project PA structure and in Federal agency implementation and oversight. It will make it easier for other parties (SHPOs, Tribes, etc.) to understand, implement, and evaluate the project PAs.

2. The Federal agencies have responsibilities under a variety of Federal preservation laws (e.g., NHPA, NAGPRA, AIRFA, ARPA, etc.) to consider project effects to historic properties and other cultural resources, and manage those resources in a spirit of stewardship for future generations.

3. Under Section 106 these obligations to take into account the effects of FCRPS actions on historic properties within the APE are irrespective of land ownership; however, land tenure may affect or otherwise restrict the extent to which the Federal agencies can carry out these obligations.

II. The master PA should include at least the following:

1. The elements common among the 14 project PAs, including but not limited to:

   a. The Federal agencies responsible for the FCRPS—their lines of authority and their limitations clearly set out (including commitments, oversight, personnel, access to Federal and nonfederal lands, etc.).

   b. The authorities under which the Federal agencies operate (statutes, regulations, etc).

   c. A process for interagency planning and coordination, and mechanism for soliciting and considering stakeholder and public comments and concerns (cultural resources subcommittee and cooperating groups).

   d. A statement of purpose and list of the goals of this PA, and the reasons for the project specific PAs.

   e. Common performance and documentation standards, including:

      1. professional qualification standards;
      2. documentation and reporting standards;
      3. time frames for stakeholder response and Federal agency actions;

34

f. The explicit steps Federal agencies are required to take to meet their Section 106 responsibilities on all lands affected by FCRPS undertakings, including the obligation to:

1. identify, or attempt to identify, historic properties within the APE;
2. assess and resolve adverse effects to historic properties;
3. carry out these steps in consultation with others (SHPO, Tribes).

g. The requirements and standards for the Historic Property Management Plans and Five year action plans/annual work plans for each of the FCRPS projects.

h. Procedures for dealing with emergencies and late discoveries.

i. Procedures for resolving disputes among consulting parties.

j. Procedures for amending or terminating the umbrella PA or the specific PAs.

k. Specific measures that can streamline coordination and simplify legal and regulatory responsibilities and requirements.

III. Issues for consideration in PA discussions:

- Does the introduction need to be so long? Does it need to be so jargon- and acronym-filled-filled?
- Is 1991 PA for 5 storage reservoirs still valid, or is it superseded by this PA?
- Timelines for development/implementation/ etc.—are they realistic?
- Consulting parties—how to solicit comments on draft PA, how to get feedback during implementation of PAs?
- Roles of SHPO/THPO, tribes, etc.
- Responsibilities for actions affecting private property and Indian reservations
- Delineation of Area of Potential Effects and agency responsibilities to identify historic properties within it (or to attempt it).
- Identification and treatment of traditional cultural properties.
- Are there alternatives to data recovery for threatened archaeological sites?
- What to do about erosion and site looting/site security?

tmc 5/25/06

35