



The Confederated Tribes of the Colville Reservation  
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December 8, 2006

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

Re: Draft FCRPS Systemwide PA Comments.

Dear Tribal Affairs Officer:

Thank you for this opportunity to comment on this draft of the Systemwide Programmatic Agreement. We do appreciate the effort required to draft this document and respond to and incorporate all of the comments. This latest draft is different than previous versions. The differences appear to be a result of three factors: polished editing, incorporating comments from reviewers, and avoidance of certain issues through careful wordsmithing. Because the agreement differs from preceding drafts, it was necessary to have our staff thoroughly review the document in its entirety.

Agreement documents set a tone for negotiation and implementation. In the second paragraph of the introductory letter it states the undertaking “may” threaten sites and “have the potential” to adversely affect historic properties. We hoped we were beyond such qualification and hedging of issues. Generations of technical, managerial and policy level people will follow the conclusion of these negotiations. They need clear language so certain issues do not continually return to the table. The undertaking threatens sites and adversely impacts historic properties.

Language in the introductory letter, the title of the programmatic agreement, the agreement itself, and responses to the previous comments carry the subtle implication that this is a Lead Federal Agency agreement. Emphasis is placed on meeting agency and interagency needs. Several references specifically invoke or imply federal agency decision making authority. The records of decision from the System Operation Review and the agencies’ Native American policies mandate a cooperative process for cultural resource management. Please be reminded the implementing regulations for section 106 confer responsibility for compliance, not decision making authority. 36 CFR Part 800.2(a) is reproduced below with pertinent portions highlighted.

**§ 800.2 Participants in the Section 106 process.**

(a) *Agency official.* 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 in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or

tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

In drafting the agreement, it seems the development of cultural resource management along the Columbia River has been forgotten or overlooked. Tribes played a critical role in making agencies aware of the crisis before us, the irrevocable loss of many thousands of archaeological, religious, cultural, and burial sites. Tribes committed tens of thousands of hours on cultural resource management meetings and planning, and on preparing or reviewing cultural resource management documents since the inception of the System Operation Review. If not for our efforts, many of the staff, programs, and funds committed to historic preservation in the Federal Columbia River Power System would not exist, yet we remain marginalized outsiders in the implementation of the program.

We see a lack of continuity in personnel and policy and little cultural understanding on the part of some agencies. For instance, as one of our technical staff paraphrased the words of former Walla Walla District Commander, Lt. Colonel Randy Glasser, 'We want to work cooperatively, but you people must understand there has to be compromises and concessions on both sides.' Without being too dramatic but remaining factual, we understand that our land was taken. We were forced from our homes and riverside camps. We were hunted and killed during the "Indian" wars for defending our homeland from illegal encroachment. The United States forced us on reservations and dammed the rivers. Life-sustaining salmon runs were decimated and the air, land, and water were polluted. Looters and academics alike removed the remains of our ancestors from the ground. Because of the Kennewick Man case, the Walla Walla District is even denying us our ethnicity and heritage by suggesting that the people and materials found in archaeological

and burial sites may not be Native American. This is true even for a site in the heart of territory determined by the Indian Claims Commission to be exclusive use lands, studied for almost a half century as a Native American site, and that is an integral site in defining many Native American cultures in the Columbia Plateau. Those are our concessions and compromises. In return, federal agency staff have spent several thousand hours at the conference table with tribal people and expended a sum less than 10% of the annual Grand Coulee Dam payment to the United States Treasury. Within the last seventy years we believe less than 100 million dollars have been spent by the Lead Federal Agencies for compliance with national historic preservation laws.

While the document has promise, we have numerous remarks. Below find our specific correction requests, questions, and comments on the draft Systemwide Programmatic Agreement (PA).

- **Loophole statements in the PA:** The wording of the PA indicates that adherence fulfills Section 106 compliance and yet actions will only be considered if *feasible and cost effective*. Therefore, if all actions are determined *non feasible and non cost effective*, the agencies would still be compliant without expending any effort. **Page 3: NOW, THEREFORE** states “and that adherence to the terms of the PA shall satisfy the Lead Federal Agencies’ Section 106 responsibilities for addressing the effects of the undertaking on historic properties.” **AND Page 5, #5** states “Seek to avoid or minimize adverse effects on historic properties *when feasible and cost effective...*” **AND Page 8 last bullet [referencing page 7 last sentence “The Lead Federal Agencies will set priorities based on a variety of factors, which include, but are not limited to”]** “the *availability of funds.*”
- **Question:** Who determines feasibility and cost effectiveness?
- **Question:** How are feasibility and cost effectiveness determined?
- **Correction:** Introductory Letter – paragraph 2 – Remove qualifiers “have the potential to” and “may” when characterizing effects to historic properties.
- **Page 1 Comment:** Why is this version of the draft the “Final Draft”? It carries the presumption the next generation of the PA will be sent for signature regardless of the comments received by participants other than the Lead Federal Agencies (since we were informed all Federal Lead Agencies concurred on the present language).
- **Page 1 Correction:** Title – All regulatory authorities should be listed in the title. This includes Tribal Historic Preservation Officers for tribes with lands in the APE.
- **Page 1 Question:** Whereas 4 and 5 – Why aren’t transmission lines included?
- **Page 2 Correction:** Whereas 6 – Change “the undertaking causes or may cause direct or indirect adverse effects” to “the undertaking causes direct and indirect adverse effects”.
- **Page 4 Correction:** II.A – Needs to stipulate cooperating group.
- **Page 4 Correction:** II.A.2 – First sentence should read, “Develop a mechanism for prioritizing *background research*, identification, evaluation, *identification of impacts* and treatments...” Italicized portions added to more accurately reflect the section 106 process.
- **Page 4 Question:** II.A.2 – Who determines whether the undertaking “contributes” to or is the “principle cause” of an adverse impact? Answer should include consultation and the Cooperating Groups.
- **Page 5 Clarification:** II.A.3 – Please clarify why inventory is replaced with prioritization.

- **Page 5 Correction:** II.A.4 – Please include reference to either or both the Records of Decision and Cooperating Groups.
- **Page 5 Question:** II.A.5 – Who determines if an action is “cost effective”? Answer should include consultation and the Cooperating Groups.
- **Page 5 Correction:** II.A.6 – Please include reference to Cooperating Groups.
- **Page 7 Comment:** III.B – Caution should be exercised not to relieve other agencies of their responsibilities. For example, a Public Utility District suggested many impacts of their undertaking are the direct result of Grand Coulee Dam operations.
- **Page 7 Comment:** IV.A. – First bullet. What is meant by “nature” of historic properties
- **Page 8 Comment:** IV.A – Second and third bullet. Statements appear redundant.
- **Page 8 Correction:** IV.B – First sentence should read, “... further discussion with interested parties *and as prioritized by the Cooperating Groups* in development of the Project-specific PAs or HPMPs.” Italicized portions added to more accurately reflect the Records of Decision from the System Operation Review and the agencies’ Native American policies.
- **Page 8 Comment:** IV.B.1(b) – Please define “unrestricted”. Unrestricted access may not be necessary to do background research, inventory, evaluation, impact analysis or mitigation.
- **Page 8 Correction:** IV.B.1(c) – There is no “public” access to collections. Please end sentence with “...allow for *use of the collection according to 36 CFR Part 79.10.*” Italicized portions added to more accurately reflect appropriate laws. The same holds true for IV.B.2(c), IV.B.3(c), and IV.B.4(c).
- **Page 9 Comment:** IV.C – Explain in greater detail. Spell out as in the previous section.
- **Page 9 Question:** IV.D – Will there be times when the Lead Federal Agencies hold easements that do not require fee-title holder consent or authorization? Perhaps the statement should be modified to include acknowledgement of provisions in easements.
- **Page 10 Question:** V.D – Please clarify when project-specific PAs or HPMPs must be completed and that they be reviewed or renewed whenever the Systemwide PA is amended.
- **Page 13 Correction:** VI.B – Again, this PA does not include “professional researchers”, replace with “Cooperating Groups”. If it is the intent of the Lead Federal Agencies to address their obligations to the general public, this is not the appropriate instrument.
- **Page 14 Footnote:** This is the first mention of the role of the cooperating group. It should be stated near the beginning of the document.

The stated purpose of the PA, as provided in Stipulation I, appears to center on regulatory and compliance issues. All parties to the PA are federal agencies (as land managers, land owners, regulators, or those undertaking actions), historic preservation officers, and tribes with interests in the projects. Tribes are specifically identified in various parts of the National Historic Preservation Act, the section 106 implementing regulations, and various other mandates for full and active consulting roles.

In response to a similar concern by the Confederated Tribes of the Colville Reservation during review of the previous draft [assigned Comment #133], the responder referenced 36 CFR Part 800.2(d)(1 and 2). As stated in original text from which Comment #133 was drawn:

“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.

We went on to say, “Note that the public is only involved through agency procedures and/or at appropriate points.” Both statements remain true. There is no objection to any party of the PA utilizing “professional researchers”. The objection is to codifying “professional researchers” as a class with standing in the PA. The respondent(s) also refer us to Comment #79, suggesting that the Washington State Department of Archaeology and Historic Preservation requested the inclusion of “professional researchers”. Our reading of the comment and the response suggests nothing more than we have recommended, if the agencies need professional advice, they have the ability to contract for that service.

The respondent(s) also failed to note that 36 CFR Part 800.2(d) clearly invokes either the NEPA comment process for incorporating public comment or to utilize the mechanism in Subpart B 800.3(e): “*Plan to involve the public.* In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800.2(d).” This is our point.

- **Page 14 Correction:** VIII, first sentence – Please see our introductory comments on the agencies decision making authority. Replace the first sentence with wording consistent with 36 CFR Part 800.2. For example: *While the Lead Federal Agencies have a statutory obligation to fulfill the requirements of section 106 and take legal and financial responsibility for compliance relating to the undertaking, ...*
- **Page 15 Correction:** VIII.B.1&2 – Please insert “recommendations” into the list of Cooperating Group responsibilities.
- **Page 15 Correction:** VIII B, last sentence – Please rephrase to, “The Lead Federal Agencies *remain responsible for all required findings and determinations* recommended by the Cooperating Groups. Italicized portions replace previous language to reflect more accurately the section 106 process.
- **Page 15-16 Correction:** VIII.E – Remove “... and the interested public.” from participant list. These meetings reveal site locations, sensitive cultural details, and privileged contract information.
- **Page 17 Comment:** XI.A – This leaves conflict resolution in the hands of the Lead Federal Agencies, it does not even concede to recommendations of the ACHP. Do the Lead Federal Agencies believe tribes will find it in their sovereign interest, find that the agencies are fulfilling their trust responsibilities, or believe the agencies are complying with the records of decision and agency Native American policy if the tribes allow all final arbitration to be dictated by the Lead Federal Agencies? A better mediation device needs to be incorporated into the PA.
- **Page 17 Correction:** XI.A.5 – Replace “decision” with “determination.

- **Page 18 Correction: XI.B** – Replace “decision” with “determination.
- **Page 18 Correction: XI.C** – Replace “decision” with “determination.
- **Page 18 Correction: XI.F** – First Sentence Typo, insert “of” to state ...or more *of* the Lead Federal Agencies...

We shall close this letter with the exact words our Tribal Historic Preservation Officer used to close her January 30, 2006 comment letter on the previous draft of the PA. “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 we can be of assistance, or if you need to discuss policy level issues, please contact me at (509) 634-2218. If you have any management or technical questions related to our comments, please contact Camille Pleasants, Tribal Historic Preservation Officer, at (509) 634-2654.

Sincerely,



Michael E. Marchand  
Chairman, Colville Business Council

cc: Doug Seymour – CBC Culture Committee Chair  
John Sirois – Cultural Preservation Administrator  
Camille Pleasants – Tribal Historic Preservation Officer  
Guy Moura – TCP Coordinator  
John Pouley – Archaeologist III  
310907 Correspondence File  
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**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**

**WHEREAS**, Congress authorized the U. S. Army Corps of Engineers, Northwestern Division (Corps) to take lands within the Columbia River Basin to construct 12 dams and their associated lakes or reservoirs, which are Libby, Albeni Falls, Chief Joseph, McNary, John Day, The Dalles, Bonneville, Dworshak, Lower Granite, Lower Monumental, Little Goose, and Ice Harbor dams and their lakes or reservoirs, and also authorized the Bureau of Reclamation (Reclamation) to construct Grand Coulee and Hungry Horse dams and their reservoirs (all hereafter called Projects); and,

**WHEREAS**, Congress authorized the Bonneville Power Administration (BPA) to market and distribute electrical power generated at the Projects; and,

**WHEREAS**, Congress defined the purposes for those Projects (hereafter called Project purposes), which include hydropower generation, navigation, flood control, irrigation water supply, municipal and industrial water supply, recreation, and fish and wildlife and other natural resources management (see Attachment 1 for Project authorizations); and,

**WHEREAS**, the 14 Projects are coordinated by the Corps, Reclamation, and BPA as a system (called the Federal Columbia River Power System (FCRPS)), within the operating limits developed by the Corps and Reclamation, while BPA schedules and dispatches power; and,

**WHEREAS**, the Corps, Reclamation, and BPA (hereafter called the Lead Federal Agencies) have determined that their coordinated implementation of these Project purposes, including FCRPS operations and other Project purposes, and implementation of land-based minor construction, maintenance, or other ground disturbing activities to support those purposes, and including future modifications to the operating regime for any or all of the Projects, collectively comprise the “undertaking” for the purposes of Section 106 of the National Historic Preservation Act (NHPA)(16 U.S.C. § 470f)

(hereafter called Section 106) for this agreement (hereafter called the Systemwide PA); and,

**WHEREAS**, the undertaking causes or may cause direct or indirect adverse effects (defined in the regulations of the Advisory Council on Historic Preservation (ACHP) implementing Section 106 of the NHPA, and found at 36 C.F.R. § 800.5(a)(1)) to historic properties included on, or eligible for inclusion on, the National Register of Historic Places (hereafter called the National Register) through inundation, erosion, exposure, and other factors; and,

**WHEREAS**, to comply with Section 106, the Lead Federal Agencies are responsible for taking into account the effects of the undertaking on historic properties as defined in 36 C.F.R. § 800.16(y), and have documented their intent to address adverse effects in the Intertie Development and Use (IDU) PA (executed 1991) and the System Operation Review (SOR) Records of Decision (RODs) (signed 1997); and,

**WHEREAS**, although this Systemwide PA is not a funding agreement, the Lead Federal Agencies nonetheless note that they coordinate their funding for implementation of Section 106 NHPA compliance activities for Project operations in the following manner: with ratepayer monies, BPA directly funds the power share of compliance activities, whether for hydropower specific operations or for the power share of multipurpose (joint use) operations attributed to all the Project purposes, and the Corps and Reclamation, respectively, fund the non-power share of compliance activities with appropriations from Congress. This funding coordination is the subject of direct funding agreements (DFA) for operation and maintenance of the Projects and related memoranda of agreement (MOAs) between the Corps and BPA, and Reclamation and BPA, overseen by the Joint Operating Committee (JOC) of these Lead Federal Agencies. Because this PA addresses operation of the Projects for all Project purposes, not all compliance activities taken pursuant to this PA will necessarily be co-funded by BPA. Also, because this PA addresses Section 106 NHPA compliance activities only, compliance activities pursuant to other Federal statutes (see Stipulation IB) will continue to be funded commensurate with agency responsibilities and consistent with the funding agreements; and,

**WHEREAS**, pursuant to 36 C.F.R. § 800.14(b), the Lead Federal Agencies wish to provide in this Systemwide PA a set of common standards, procedures, requirements, and commitments that the Lead Federal Agencies shall apply at the 14 FCRPS Projects; and,

**WHEREAS**, the Lead Federal Agencies have either consulted with, or provided the opportunity to consult with, the ACHP, the State Historic Preservation Officers (SHPO) of Idaho, Montana, Oregon, and Washington; and the Tribal Historic Preservation Officers (THPO) of the Confederated Tribes of the Colville Indian Reservation, the Nez Perce Tribe, and the Spokane Tribe of Indians; the National Park Service, the Bureau of Indian Affairs; and the U.S.D.A. Forest Service; as well as the Coeur d'Alene Tribe, the Confederated Tribes of the Colville Indian Reservation, the Confederated Salish and Kootenai Tribes of the Flathead Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the

Confederated Tribes and Bands of the Yakama Nation, the Kalispel Tribe, the Kootenai Tribe, the Nez Perce Tribe, and the Spokane Tribe of Indians, on the development of this PA and have offered these parties the opportunity to become a signatory party to the extent of their jurisdiction to this Systemwide PA; and,

**WHEREAS**, pursuant to the President's Memorandum on "Government to Government Relations with Native American Tribal Governments" (April 29, 1994) and Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," the Lead Federal Agencies have established Government-to-Government relationships with the above named Federally recognized tribes because certain actions carried out in the operation of the Projects has the potential to affect tribal interests; and,

**NOW, THEREFORE**, the above named parties, each within the limits of their authority and jurisdiction, agree that, pursuant to 36 C.F.R. § 800.14(b)(iii), the Lead Federal Agencies shall take into account the effects of the undertaking on historic properties in accordance with the following stipulations, and that adherence to the terms of this PA shall satisfy the Lead Federal Agencies' Section 106 responsibilities for addressing the effects of the undertaking on historic properties.

### **STIPULATIONS**

The Lead Federal Agencies shall ensure that the following stipulations are implemented consistent with the schedule identified in Attachment 2. The Lead Federal Agencies will together implement the Systemwide actions pursuant to this PA. Project-specific actions will be implemented by the Corps, or the Corps and BPA, at Corps-managed Projects and by Reclamation, or Reclamation and BPA, at Reclamation-managed Projects.

A glossary of definitions utilized in this PA is provided in Attachment 3.

#### **I. PURPOSE OF THIS SYSTEMWIDE PA**

Because the undertaking encompasses 14 Projects spread across four States, this Systemwide PA is designed to:

- A. Set forth the Lead Federal Agency obligations, requirements, and standards pursuant to Section 106 of the NHPA that will apply to all 14 Projects. **The Kalispel Tribe of Indians Concurs.**
- A. Address Section 106 NHPA compliance only. Federal agency compliance with Section 110 of NHPA, and other Federal statutes such as the Archaeological Resources Protection Act or the Native American Graves Protection and Repatriation Act, will remain the responsibility of the individual Federal agencies to address as appropriate to their authority and jurisdiction. **The Kalispel Tribe of Indians does not concur.**

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According to stipulation II subpart A (2), the Lead Federal Agencies seek to limit their section 106 of the NHPA exposure to “...for effects of their undertaking throughout the APE commensurate with the extent that their undertaking causes the effect.” Should the undertaking be the principal causation for the exposure of Native American graves within the APE and/or the principal contribution for the exposure of cultural enriched sediments to the predation of amateur looting, then the FCRPS program is subject to contributory negligence. It is therefore reasonable and consistent with the best practice of law and resource management that the PA adequately redress the Lead Federal Agencies’ proportional liabilities relative to the hopefully rare ARPA and NAGPRA events that may occur in the next 30 years. Stipulation I subpart B is deficient and needs to be corrected; without such a correction the Kalispel Tribe of Indians shall not sign this agreement and it shall encourage its peers to similarly abstain from concurring with this agreement.

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B. Provide a mechanism for streamlining compliance with Section 106. The Lead Federal Agencies, at their discretion, will comply with Section 106 pursuant to this PA in any of the following manners:

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1. Develop and implement a Project-Specific PA that meets the general principles set out in Stipulation II below and contains the standards and requirements set out in Stipulation V.F; or,
2. Develop and implement a Historic Property Management Plan (HPMP) that meets the general principles set out in Stipulation II below and contains the standards and requirements set out in Stipulation V.F below and Attachment 4; or,
3. Develop and implement both a Project-Specific PA and an HPMP at the discretion of the Lead Federal Agencies in consultation with interested parties; or,
4. The Lead Federal Agencies may comply with the ACHP’s regulations on a case-by-case basis without the use of a Project-Specific PA or HPMP.

**Comment:** The Kalispel Tribe of Indians concurs that Stipulation I subparts C (1) through C (4) may be legal and permissible alternatives to defined regulatory compliance; yet, strongly recommends that subpart C (4) be used in the rarest of occasions and with full consultation with the affected parties. Piecemeal management of a resource is the least desirable of stratagems and an approach most likely to be challenged by affected parties and judicially reversed. Case-by-case management fails to consider cumulative effects, often fails to consider indirect effects, and may constitute periodic unequal protection under the law. Stipulation I subpart C (2) may be permissible should both an “opt-out” and dispute resolution clause be encoded in an administrative agreement between affected parties. HPMP typically are without

such mechanisms therefore cannot be seen as an equivalent document as a project specific PA.

- D. Provide for streamlining of the Section 106 review process through exempting certain kinds of routine actions that have limited potential to affect historic properties, or by setting up other Project-specific coordination procedures that expedite the Section 106 review process. The Lead Federal Agencies will identify exemptions and other Project-specific coordination procedures to expedite the Section 106 review process in either Project-specific PAs or HPMPs.

## II. SYSTEMWIDE PA PRINCIPLES FOR SECTION 106 COMPLIANCE

- A. *Address Section 106 Compliance Requirements.* Consistent with the stipulations in this Systemwide PA, the Lead Federal Agencies shall, in consultation with the appropriate consulting parties set out in the ACHP's regulations:
1. Define the Area of Potential Effects (APE) in accordance with Stipulation III.
  2. Develop a mechanism for prioritizing identification, evaluation, and treatment of historic properties within the APE in accordance with Stipulation IV. The Lead Federal Agencies are responsible for effects of their undertaking throughout the APE commensurate with the extent that their undertaking causes the effect. Where the undertaking is the principal causative factor for adverse effects, the Lead Federal Agencies are responsible for addressing these effects. Where the undertaking only contributes to (and is not the principal cause of) adverse effects, the Lead Federal Agencies are responsible only for the increment of effect caused by their operations. **Comment: Proportional liability of adverse effects maybe a reasonable limiting variable to define; yet, be mindful that there are "keystone" and "cornerstone" effects. A keystone effect is one that follows basal environmental/historical conditions wherein limitations can be reasonably assessed. A cornerstone effect, however, predates other peer and/or derivative effects to a landform. Let us say, for argument sake, that a project erodes 20 percent of the vertical face of an archaeological site. If that 20 percent is located at the base of the landform, then the project has a foreseeable and direct effect upon the remaining 80 percent of overburden. It is then immaterial that the overburden is overgrazed at the same time by a third party. Interestingly, seeking to define proportional liability raises the following questions; what are the baseline data that shall be used to calculate that liability? If a proportional liability doctrine is both legal and acceptable within the region (doubtful) how then shall the Lead Federal Agencies mitigate for widespread albeit "minor" effects? Remember 36CFR800.1 (a) does not stipulate that there are degrees of effect that an agency can dismiss. Will "keystone" project induced effects of small quantity be "banked" and credited towards other off site mitigations? If so, how and who**

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administers the mitigation? And if such an approach is followed, then what are the accounting procedures that are verifiable and allow for transparency?

3. Identify and evaluate historic properties within the APE in accordance with Stipulation III and Stipulation IV. The Lead Federal Agencies do not anticipate implementing an inventory throughout the APE, but instead will apply the prioritization process defined in Stipulation IV to guide implementation. If a property does not meet the eligibility criteria for listing in the National Register, and thus is not a “historic property” subject to Section 106, the Lead Federal Agencies shall have no further responsibility to consider it under the terms of this PA or the relevant Project-specific PA/HPMP. **Comment: Please note, that cemeteries are categorically excluded from consideration on the National Register and as such are not Historic Properties. In accordance with stipulation II subpart A (2) of this proposed agreement the Kalispel Tribe of Indians shall hold responsible the lead Federal Agencies if its undertakings unearth and/or remove Native American graves and/or cemeteries from their primary context. We are mindful that this agreement is not a funding mechanism and is primarily intended to “streamline” regulatory processes yet it behooves the FCRPS program to have a reserved/contingency fund within its annual power share allocation to be available when very bad things happen<sup>1</sup>. Any Tribal staff time devoted to the response for such an event shall have to be compensated for if not via the direct funding agreement and related services contracts what mechanisms do the lead Federal Agencies have in place for these contingencies? Creating a problem and then seeking a solution through the guise of “consultation” cannot be reasonably considered “acting in good faith.”**
4. Evaluate impacts and determine the effects of the undertaking on National Register listed or eligible historic properties (see Stipulation IV). These determinations will occur in consultation and using processes and definitions provided in 36 C.F.R. § 800.4(c) and 36 C.F.R. § 800.5. **The Kalispel Tribe of Indians Concurs.**
5. 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 Kalispel Tribe of Indians Concurs.**
6. Develop a Systemwide Research Design to guide evaluation and treatment of historic properties (see Stipulation VI). Develop annual work plans to prioritize annual activities under the terms of this Systemwide PA (see Stipulation VII.B.). **The Kalispel Tribe of Indians Concurs. See comments provided under Stipulation VII.B.**
7. Consult with the appropriate SHPO/THPO, tribes, and other parties that have an interest in the effects of the undertaking on historic properties at a Project, in the

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<sup>1</sup> The budgetary effects of Kennewick Man’s discovery, and the government’s response thereafter, forestalled the efforts of a number of cooperating groups within the region, lest we forget our own history.

identification of historic properties, and development of appropriate feasible and cost effective treatment or mitigation measures when adverse effects on historic properties will occur. **The Kalispel Tribe of Indians Concur.**

8. Define procedures in the Project-specific PAs or HPMPs to address emergencies and inadvertent discoveries of historic properties associated with the undertaking. **The Kalispel Tribe of Indians Concur.**
- B. *Professional Qualification Standards.* As required under Section 112 of the NHPA, the Lead Federal Agencies shall require that their employees or contractors meet professional standards under the regulations developed by the Secretary of the Interior. (62 Fed. Reg. 33707, June 20, 1997). The Lead Federal Agencies will apply the standards in a manner commensurate with the nature and complexity of the specific property or resource being investigated or treated, and consistent with procurement and other regulatory requirements of the Lead Federal Agencies. **The Kalispel Tribe of Indians Concur, with the following caveat. The above referenced guidelines do not define the technical requirements of a professional linguist, ethnographer, and/or culturally literate practitioner of Kalispel traditions or those of peer sovereignties. These specific skill sets are essential in the development and management of TCP datasets, the development of audience appropriate educational materials, and have hitherto been heavily invested in by the Kalispel Tribe. In the absence of such explicit guidance, the Kalispel Tribe of Indians expects the Lead Federal Agencies to extend to it the full faith and credit that its anthropological and cultural experts meet and/or exceed the professional and ethical standards practiced by these above named professions/community roles.**
- C. *Public Benefit from Resource Management.* This Systemwide PA is designed to provide public benefit consistent with the Lead Federal Agencies' responsibilities under Sections 1 and 2 of the NHPA to preserve and protect the historical and cultural heritage of the area affected by the undertaking. Public benefit will be achieved, among other ways, by:
1. Public outreach and education. **Comment: As per Stipulation II, subpart C (1), public outreach and education must be responsive to the needs of the resource and thus shall necessitate both age/audience appropriate media and a positive response loop in the educational process. As the interested publics receive program sponsored education, this should expand the recipient's worldview and spark the desire to learn more. A series of brochures (e.g., "give a hoot and don't loot") without positive and more enriching content shall be a sterile exercise destined to fail.**
  2. The accumulation and dissemination of information to tribal communities, scientific communities, and the general public to foster an understanding of the history and cultural heritage of the Columbia Basin.
  3. Illustration of accomplishments made in implementing this PA.

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4. The promotion and use of collections for education and research purposes, consistent with 36 C.F.R. § 79.10. **Comment:** As per Stipulation II, subpart C (4), to meet the promise of this stipulation a thorough and thoughtful examination of the curated archaeological record currently held in the region’s various depositories shall reveal both idiosyncratic and diachronic variation in archaeological analysis. In the development of the region’s research design the recognition of data gaps, as anticipated by Stipulation VI subpart A (5), should consider the development of archaeometric attributes that are consistently reported for inter-watershed analysis. Initially this will be a developmental problem that is resolvable. Thereafter re-examination of orphaned collections (existing collections) into the standard archaeometric attribute database could/should provide internship/scholarship opportunities for the next generation of technical service providers.
5. Consideration of actions that seek to protect historic properties so the resources remain available for future generations.

**Comment:** The commercial development of heritage resources is a perilous enterprise that will have differential acceptance throughout the region and may implicitly contradict the United States of America’s commitment to the UNESCO convention (Article 2, subpart 2) (UNESCO 1970<sup>2</sup>) by commoditizing these resources in certain circumstances. Furthermore the advocacy for eco- or heritage tourism should be a locally driven objective rather than a regionally governed/funded enterprise. The commoditization of ethnic identity, particularly amongst traditional practitioners, is often seen as cheapening that identity. This is not to say that there is not already a vibrant heritage tourism industry; according to recent estimates \$630million are spent annually within Washington State in this sector of the economy (DAHP 2006:3)<sup>3</sup>. Those expenditures are predominately urban whereas the majority of the projects’ APE are rural. In terms of social equity the advocacy of this policy appears to be problematic at the very least.

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In carrying out these responsibilities the Lead Federal Agencies will take into account the provisions of Section 304 of the NHPA, which allows Federal agencies to restrict disclosure of certain information where the disclosure may cause a significant invasion of privacy; a risk of harm to the resource; or, impede the use of a traditional religious site by practitioners (see 16 U.S.C. § 470w-3(a)).

- D. *Consulting party responsibilities.* Consulting parties have an obligation to provide timely responses and comments back to the Lead Federal Agencies. Unless otherwise agreed to by the Lead Federal Agencies, consulting parties shall have 30 calendar days in which to respond to a request for comment. If the consulting party

<sup>2</sup> UNESCO 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, <http://exchanges.state.gov/culprop/unesco01.html>

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<sup>3</sup> DAHP 2006 *The Economic Benefits of Historic Preservation in Washington State*, <http://www.oahp.wa.gov/documents/EconomicDevStudy.pdf>

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fails to respond within 30 calendar days, the Lead Federal Agencies can assume concurrence with any proposed action made in the request for comment.

- E. *Term and Review of the Systemwide PA.* Unless terminated in accordance with Stipulation XIV, the term of this Systemwide PA shall run for a period of 30 years from the date of execution of this Systemwide PA, after which it will become null and void unless extended by mutual agreement of the signatory parties within their area of jurisdiction. During this period, the PA shall be reviewed by all signatories on a regular basis, at intervals not exceeding 5 years, in accordance with Stipulation X. If the term is not extended, and if no other PA or MOA is in effect at a Project, then the Lead Federal Agencies shall comply with 36 C.F.R. § 800.4-6 with respect to the undertaking.
- F. The Lead Federal Agencies shall implement commitments consistent with schedules identified under the Stipulations to this agreement and summarized in Attachment 2.

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### III. AREA OF POTENTIAL EFFECTS (APE)

- A. The APE for the undertaking includes those lands either directly or indirectly affected by the undertaking at the twelve Corps and two Reclamation Projects. This includes lands identified as being affected at the date of final signature of this agreement, lands where adverse effects are identified in the future, and lands where effects of the undertaking are reasonably foreseeable.
- B. The APE encompasses both Federal fee lands and other real property where the U.S. Government has a current and future legal interest, as well as non-Federal lands where there is an adverse effect caused by the undertaking. The APE may also include lands in downstream reaches where there is no current Federal ownership or legal interest provided the Lead Federal Agencies, in coordination with appropriate consulting parties, have determined the undertaking causes adverse effects on historic properties on such lands.
- C. The APE may be discontinuous, interrupted on stretches of the river where there are essentially no effects attributable to the Federal undertaking. It is anticipated this might occur for sections of the river below the five Projects that do not release into the next component in the FCRPS system (at Hungry Horse, Libby, Albeni Falls, Dworshak, and Bonneville). **The Kalispel Tribe of Indians does not concur. It is presumptuous to assert without a definitive peer reviewed study to make such an *a priori* claim. During the fall seasonal release of Albeni Falls' waters terrestrial access to lands downstream of that project are obstructed. In some cases the use of traditional cultural properties is seasonal and contingent upon access to resources. To assume that an adjoining hydroelectric project encroaches upon the federally operated project and thereby provides cover from downstream effects is an untested hypothesis.**
- D. The Lead Federal Agencies, in coordination with appropriate consulting parties, will determine the Project-specific portion of the APE. The determination will be documented in the Project-specific PA or HPMP. The Lead Federal Agencies will make this determination utilizing the best available data, and consistent with processes for consultation defined in 36 C.F.R. § 800.4(a). Once the portion of the APE associated with each Project is defined, the Lead Federal Agencies will proceed with identification, evaluation, and treatment within that area in accordance with the priorities in Stipulation IV, and commensurate with the likelihood of there being adverse effects primarily caused by the undertaking. **Comment: To date the Kalispel Tribe of Indians has been diligent in assisting the Lead Federal Agencies in identifying, evaluating, and treating adversely affected historic properties by the project's undertakings. In light of the rational priorities enumerated under Stipulation IV we have a growing concern that as these mile stones pass and we approach the challenges inherent to historic properties located on privately owned real property that negotiation inertia will set in. Under Stipulation IV subpart B (2) (a) through (c) considerable real estate assistance in the form of negotiated easement access and/or**

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the purchase of partial estates may be required to appropriately treat adversely affect historic properties. To date this element within the local program is the weakest performer, requires substantial financial assistance, and has the spottiest record of on time delivery relative to tight construction and ESA schedules. We do not wish to see these process miles stones be reinterpreted into project tombstones relative to the foreseeable inertia that shall result when we involve ourselves with Stipulation IV subpart B (2) (a) through (c) scenarios. This particular issue will be discussed at the AFD CG meetings, will have to be clarified within that project's HPMP

#### **IV. PRIORITY FOR IDENTIFICATION, EVALUATION, AND TREATMENT OF HISTORIC PROPERTIES**

A. Because of the geographic scope and complexity of the undertaking, all compliance actions cannot occur at once. Therefore, the Lead Federal Agencies will set priorities for survey, evaluation, and treatment activities in consultation with appropriate signatory parties for each Project and document the priorities in the Project-specific PA or HPMP. The Lead Federal Agencies will set priorities based on a variety of factors, which include, but are not limited to:

- the likely nature and location of historic properties
- the extent to which potential effects on an historic property are the result of the undertaking
- the magnitude and nature of potential effects on historic properties caused by the undertaking
- the potential long-term public benefit from management of the historic property (including the curation of and public access to collections derived from investigations)
- the degree to which the undertaking endangers the historic property
- if addressing non-Federal lands, the willingness of the landowner to provide access
- the extent and nature of past investigations at a Project or at downstream lands affected by the undertaking
- the historical or cultural significance of affected historic properties
- the physical integrity of the historic property
- the potential of the property to yield important information about, or insight pertinent to, a defined research objective consistent with the Systemwide Research Design
- the Lead Federal Agencies' consideration of their authorities
- the cost to implement the actions
- the availability of funds

B. Typically, for identification, evaluation, and treatment, the Lead Agencies expect to use the prioritization process outlined below, subject to further discussion with interested parties in development of the Project-specific PAs or HPMPs.

1. The Lead Federal Agencies will give first priority to lands or historic properties where:

a. the undertaking is the primary agent of the potential adverse effects; and  
**Comment:** Herein (Stipulation IV, sub-part B 1 (a)) the Lead Federal Agencies are asserting a doctrine of proportional liability. The term “the undertaking is the primary agent...” constitutes an implicit deviation from 36CFR800.1(a) wherein the federal agency is to “seek ways to avoid, minimize, or mitigate for **any** adverse effects on historic properties.” Given the complexity and geographic scope of the undertaking there is latitude within the regulations (cf 36CFR800.5 (a) (3)) wherein the Lead Federal Agencies can use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation conducted in pursuant to 36CFR800.4 (b) (2). The issue of primacy is not considered within the regulations and if the PA is to function in place of those regulations it is our expectation that it do so in a manner that is comparable to or superior than what is already permissible under the law.

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b. the relevant Lead Federal Agency has or can readily obtain an unrestricted right of access; and

c. collections generated by the actions will be permanently curated after analysis under conditions that allow for appropriate public access and use.

**Comment:** Herein (Stipulation IV, sub-part B 1 (c)) the Lead Federal Agencies appears to have set archaeological methodology as precedence in site evaluation protocol. If this is not the case and the clause applies to oral histories/literature and ethnographic datasets please clarify how intellectual property rights of these data have been accommodated and how individual civil liberties of culture bearers are assured within the “collection”.

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2. The Lead Federal Agencies will give second priority to lands or historic properties where:

a. the undertaking is the primary agent of the potential adverse effects; and

b. where the affected historic properties are of particular scientific or cultural importance; and

c. the landowner is unwilling to provide reasonable access or places restrictions on curation and public access to collections that significantly reduce the long-term benefit to the public from the investigations.

3. The Lead Federal Agencies will give third priority to lands or historic properties affected by the undertaking where:

- a. the undertaking is not the primary agent causing the potential adverse effect; and
- b. where the affected historic properties are of particular scientific or cultural importance; and

c. the landowner is willing to provide reasonable access and places no restriction on curation and public access to collections that significantly reduce the long-term benefit to the public from the investigations. **Comment:** Herein (Stipulation IV, sub-part B 3 (c)) the Lead Federal Agencies assumes that a private landowner shall wave their implied property rights to a collection. Should this occur will it be the result of an “informed consent process?” Please note, that the associated documents as per 36CFR79.3 (a) (2) would already be the property of the US Government whereas the tangible analytical samples (artifacts and debris categories) would “generally” belong to the landowner (cf 36CFR79.3 (a) (1)). Please remember that these analytical samples only have durable scientific value if retained in whole. If an informed consent process is followed, then the transfer of ownership is for **all samples** collected; collections that have been “cherry picked” are of dubious value. Also this discussion of ownership does not include artifact specimens that meet NAGPRA definitions of associated/unassociated funerary objects and/or items of cultural patrimony. Such items belong to the lineal descendent or in their absence a community that can assert cultural affinity (cf 43CFR10.14). Furthermore, under the terms of “reasonable” access to a work site, the Lead Federal Agencies should strive to avoid commoditizing any resulting collection (it is permissible to buy a construction easement but not a collection) less the agencies inadvertently contradict the United States of America’s commitment to the UNESCO (1970) convention.

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4. The Lead Federal Agencies will give the lowest priority to lands or historic properties affected by the undertaking where:

- a. the undertaking is not the primary agent causing the potential adverse effect; and
- b. the affected historic properties are of particular scientific or cultural importance; and
- c. the landowner is unwilling to provide reasonable access or places restrictions on access or curation and public access to collections that significantly reduce the long-term benefit to the public from the investigations.

C. For the identification and evaluation of properties of traditional religious and cultural significance to Indian tribes or other groups (hereafter called traditional cultural properties, or TCPs), the Lead Federal Agencies may apply the same priorities as

above. Should information or items associated with TCP values be collected, public access to such information or items will be determined on a case-by-case basis in consultation among the Lead Federal Agencies, the SHPO/THPO, and the group associated with the TCP value, consistent with the provisions of Section 304 of the NHPA.

- D. The Lead Federal Agencies will implement actions on non-Federal lands only with the authorization or consent of the fee-title holder, and only when consistent with the Project-specific PA or HPMP and Federal agency authorities. **Comment: Such a self imposed restriction ignores the fact that the lead Federal agencies can judiciously exercise a right of imminent domain where and when it is necessary. It similarly ignores the fact that the Lead Federal Agencies, commensurate with their jurisdictional scope, may obtain a negotiated easement that grants a right of inspection and/or easement for historic properties of National significant locations.**

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## V. USE OF PROJECT-SPECIFIC PAs OR HPMPs TO COMPLY WITH SECTION 106

- A. This Systemwide PA allows for the Lead Federal Agencies to meet their Section 106 responsibilities in any of three ways: through compliance with the ACHP's regulations on a case-by-case basis; through the development and implementation of a Project-specific PA; or, through the development and implementation of a signed Project HPMP. The Lead Federal Agencies may use existing Project PAs or HPMPs if they meet, or are revised to meet, the terms of this Systemwide PA.
- B. Should the Lead Federal Agencies decide to meet their Section 106 responsibilities through either a Project-specific PA or through a Project-specific HPMP, rather than through case-by-case compliance with 36 C.F.R. Part 800, adherence to the terms of that PA or HPMP means the Lead Federal Agencies are in compliance with Section 106.
- C. Once completed, the Project-specific PA or HPMP goes into effect in the following manner:
1. In the case of a PA, through its execution among the appropriate Lead Federal Agency (or Agencies), SHPOs, THPOs, affected or interested tribes, and affected or cooperating agencies, each within its area of jurisdiction; or
  2. In the case of a HPMP, through a letter from the appropriate authority in the Lead Federal Agencies committing the agency to adhere to all the terms of this Systemwide PA and the Project-specific HPMP, and sent to the signatories to this Systemwide PA with an interest in that Project for which the HPMP was prepared.

## D. Review of existing PAs/HPMPs.

1. If the intent is to use an existing Project PA or HPMP, then within six (6) months of the effective date of this PA, the Lead Federal Agencies shall review those existing PAs or HPMPs to determine whether they meet the terms of this Systemwide PA, or need to be updated to meet the terms of this PA. Should there be any material inconsistencies between this Systemwide PA and a Project-specific PA or HPMP that will be used to meet the requirements of this Systemwide PA, then that Project-specific PA or HPMP shall be revised or amended to be consistent with this Systemwide PA.
2. Within seven (7) years of the effective date of this PA, the Lead Federal Agencies shall, as necessary, either prepare a new draft or update existing PAs or HPMPs at each Project. See Attachment 2. An update would be necessary if an existing PA or HPMP that would be used to meet the requirements of this Systemwide PA at a Project lacked any of the common required elements for a PA or HPMP as set out in this Systemwide PA, or if it contained processes inconsistent with the commitments or processes defined in this Systemwide PA.

## E. All updates or revisions to an existing Project-specific PA or HPMP, or the development of any new Project-specific PAs or HPMPs, shall be developed by the Lead Federal Agencies in consultation with parties with an interest in the Project area.

1. At a minimum, interested parties will include the appropriate SHPO/THPO, affected or interested tribes, and affected or cooperating agencies. These parties shall also be provided the opportunity to review and comment on drafts of the proposed revised or new PAs or HPMPs, and the Lead Federal Agencies shall take these comments into account in finalizing the PAs or HPMPs.
2. Consulting parties reviewing draft Project PAs or HPMPs will have 60 calendar days to respond to a request for comment. If a consulting party fails to respond within 60 calendar days, the Lead Federal Agencies can assume concurrence and proceed to finalize the PA or HPMP.

## F. Each new or revised Project-specific PA or Project-Specific HPMP shall:

1. Define the Project-specific portion of the APE consistent with Stipulation III above, and provide maps that illustrate that affected area. The area affected by implementation of the undertaking at a Project will be prepared with the best available data, in consultation with parties that have an interest in the Project area.
2. Identify consultation procedures appropriate for the SHPO/THPO, tribes, and other parties involved, including procedures to address emergencies and inadvertent discoveries of historic properties (see Stipulation VIII).

3. Outline processes to identify and evaluate historic properties, assess effects from the undertaking, and resolve adverse effects of the undertaking on National Register listed or eligible properties. These processes will be defined using the prioritization process outlined in Stipulation IV. The PA or HPMP must also address the full range of potential historic property types present, including TCPs.
4. Define a process for determining the effects of the undertaking on historic properties, including a discussion of the nature and source of agents affecting historic properties.
5. 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. The Lead Federal Agencies will consider a wide range of options for treatment of adverse effects based on the National Register criteria under which a property has been determined eligible for listing. Consideration will include, but is not limited to: site protection or stabilization; scientific data recovery; historical or oral history research to document characteristics and cultural values; analysis of existing collections; monitoring; and, other non-invasive procedures. The Systemwide Research Design described in Stipulation VI will be used to guide the development of treatment plans.
6. Provide for streamlining of the Section 106 review process through exempting certain kinds of routine actions that have limited potential to affect historic properties, or by setting up other Project-specific coordination procedures that expedite the Section 106 review process.
7. Define thresholds for when or if changes in operations at the Project would trigger reassessment of Section 106 compliance activities already in place. Also define the assessment and consultation processes that will be implemented when that threshold is reached.
8. Define public outreach and education components.
9. Outline a schedule for completion of compliance actions for the undertaking.
10. Provide for emergency situations. In accordance with 36 C.F.R. § 800.12, define procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, or the Governor of a state or a tribal government within their areas of jurisdiction.
11. Provide for discovery situations involving historic properties. In accordance with 36 C.F.R. § 800.13, define procedures for actions to be taken when historic properties are discovered during the implementation of the undertaking.
12. Define processes to periodically review the effectiveness of the PAs or HPMPs.

13. If a signed Project-specific HPMP is used as the compliance document alone, it must contain the elements described in this Stipulation V.F as well as the elements described for an HPMP in Attachment 4. When both a Project-specific PA and HPMP are developed, the Project-specific PA should include the elements listed above, and the HPMP should include the elements listed in Attachment 4.

## VI. SYSTEMWIDE RESEARCH DESIGN

The Lead Federal Agencies shall complete a Systemwide Research Design to aid in the development of research objectives for use in the Project-specific PAs and HPMPs.

**Comment:** Given the temporal scope of the proposed agreement, in what timeframe shall the Lead Federal Agencies “complete” the research design? Our staff scientists have been gathering regional datasets for years, having a watershed perspective and having maintained correspondences with the majority of current regional scientists in the fields of archaeology, biology, ethnography, and linguistics they have not, as yet, heard of a call for a proposal or a request to contribute to what must be an anthology of white papers<sup>4</sup>. Shall the Lead Federal Agencies once again farm out to a third party this type of task? Be mindful that the FCPRS community is rich in competent scholars that could aid (rather than “consult”) in the meaningful completion of this task. If domestically generated, where a sense of ownership would exist, such a research design is more likely to be positively reviewed and received than a contracted product from a third party vendor.

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- A. The Systemwide Research Design will identify research domains or historic themes that may be applicable across the Columbia Basin or might pertain to subset geographic areas. It will also:

1. Contain a summary of significant past investigation and management activities, and a list of associated products; **Comment:** the goals of science and management are not always the same. Synthetic summaries of “past glories” in either respect are informative only when they construct the appropriate frame of reference. That is, what do we know and why do we assume to know this? Significant past investigations will necessitate an examination of both the archaeological and ethnographic records that are not wholly confined to the programs’ APE. Between the 1950s and 1980s the region developed a number of cultural chronologies each only substantially differing in minor details. The abandonment of developing yet more localized chronologies, with their oft confusing phase names, has been lamented by some. Rather than resurrecting this practice the region would be better served with a clear discussion of

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<sup>4</sup> It is very doubtful that a single contractor could reasonable summarize the region’s research status, progression, and/or most profitable trajectories. The academic sector of the industry is populated with competing specialized cohorts, the commercial sector of the industry has been lulled into the generation of simple compliance oriented documents and although I have a breath of knowledge it tends to lack depth, and the governmental sectors of the industry are over tasked and under staffed by an ever changing schedule of operation and maintenance demands. It is for these reasons that a multiple institutional approach to a Research Design should be sought.

developmental technological traditions and cultural horizons across the various projects. In addition, recently the orthodoxy of the Winter Village Settlement Pattern for the ethnohistoric period is being challenged and for good reason. Rather than mindlessly aping the region's past glories we should, in this effort, actively question the operational definitions we utilize.

2. Contain a list of historic properties, with their National Register eligibility status indicated and available information about them; **Comment:** This stipulation resonates as a call for the arcane method of "type site" or the fossil indicator protocol. Although reminiscent with the "old-archaeology" and potentially disfavored by contemporary "professional researchers" this approach is not needless in that for criterion "D" statements of significance are contextual. Far more than intact stratigraphy at a site should be cited as a justification for management action and the disclosure of themes and their archetypes is a productive and replicable means by which this can be attained.
3. Define temporal range, geographic scope, and property types for each theme;
4. Synthesize theoretical models presented in the past; **Comment:** Such a synthesis should endeavor to explain the differences in theory, mid-range theory, and models. These are not interchangeable concepts. As an example the Winter Village Settlement Pattern is not a theory but a descriptive model of a particular form of "Optimal Foraging Theory (OFT)" (a mid-range theory). OFT is subsidiary to the larger school of Cultural-ecology. Albeit the explanation of these essential differences may engender more philosophical debate than is productive such debate should and most likely will occur outside the domestic products of the FCRPS program. Far from being redundant the praxis of sound science relies upon the definition of basic principals. Prior to constructing lofty conceptual towers, providing a common frame of reference or foundation is a responsible first step in both planning a direction and gaging subsequent performance.
5. Identify any data gaps and research opportunities; and **Comment:** Please note that not all data gaps are genuinely created. Access to data, primarily those extant to the littoral margins of reservoirs, are contingent upon the formative histories of the valleys in which past generations of Americans sought opportunities. Within the Albeni Falls project there shall be little hope of identifying Paleo-Indian components yet the same cannot be said for the Waterville Plateau; the formative histories of these landscapes differ in respect to the accessibility by humanity in the late Pleistocene.
6. Identify systemwide public outreach, education, and heritage tourism opportunities. **Comment:** We reiterate our concerns expressed under Stipulation II, sub-part C (6). Relative to the needs of Section 110 of the NHPA the proposed regional research design could serve as a test bench for the next generation of academic researchers and may provide for internships both within

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Indian country and the Academy and perhaps function as a bridge between both perspectives where genuine understanding and learning may flourish.

- B. The Systemwide Research Design will be prepared with input and assistance from the consulting parties for this PA as well as other professional researchers. Opportunity for review and comment on the draft research design will be afforded to the public. The Systemwide Research Design will build upon existing materials, and will address archeological, ethnographic, TCP, and historic period research domains.

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**Comment: Consider revising this sub-part as provided above.**

- C. The Lead Federal Agencies will review the Systemwide Research Design at no greater than 10-year intervals to determine if it requires revision. The Lead Federal Agencies will invite all consulting parties for this PA and other professional researchers to review and participate in any subsequent revisions.

## VII. GENERAL PRODUCTS

- A. *Annual Report.* The Lead Federal Agencies will prepare an annual report that will consist of a summary of accomplishments and identification of those issues needing resolution at the system level. The Lead Federal Agencies will distribute the annual report to the consulting parties to this PA, to Cooperating Group members, and to other potentially interested members of the public. The reporting period will be the Federal fiscal year (from October 1 to September 30).
1. The report will be provided to recipients by March 31 of the following year.
  2. The first report submitted after the effective date of this PA will present baseline data that will be used to demonstrate annual accomplishment in succeeding reports. 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. **Comment: Relative to our comment under Stipulation II subpart A (2) we require the Lead Federal Agencies to clarify what they are using as "baseline data." Since the construction of the various projects there have been and continues to be damages to historic properties; where and when quantifiable the pre-project configurations of lands should be the metric used rather than some arbitrary date created by the proposed agreement. This clarification is essential in respect to the proportional liability clause the agencies seek.**

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B. *Annual Plans.*

1. The Lead Federal Agencies, with input from consulting parties, including advice from the Project Cooperating Groups (defined below) consistent with their operating guidelines, shall prepare

2. Annual Work Plans for each Project. The Lead Federal Agencies will use the Annual Work Plans to prioritize Project compliance activities. At a minimum, the Annual Work Plan and its supporting materials will include the elements in Attachment 4. **Comment: Herein lays a potential problem. Given the stated priorities within Stipulation IV and the differential performance in regulatory compliance at each of the projects this PA allows for the contingency that all but minimal work will be done at projects that are further along the compliance trajectory. What assurances can be given that cooperating groups that have excelled in their taskings to date are not penalized for past success by the slower moving projects elsewhere in the region? In your response please refrain from the mantra of "this is not a funding agreement," we know this and understand it. But let us be direct and honest with each other. As projects begin to develop Annual Work Plans that are predominated by Stipulation IV subpart B (2) (a) through (c) priorities the scant financial resources allocated and/or appropriated for this resource area will be monopolized by support tasks. The reallocation of resource monies to support tasking from field capacities will result in atrophy of field capacities or potentially a loss of these capacities at the project level. Cooperating groups further behind the compliance curve than others within the system will then naturally be inclined to take slower and much more modest steps to maintain basal funding of their programs. As yet this issue has not arisen in cooperating group meetings that we have attended but should most definitely be discussed in the CRSC as it is a system wide issue.**

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- C. *Handbook.* The Lead Federal Agencies will maintain a handbook for internal use that describes interagency communication and coordination protocols among the Lead Federal Agencies. The Handbook will be available to the public.

## VIII. CONSULTATION AND COORDINATION

While the Lead Federal Agencies retain final decision making authority for all actions relating to the undertaking, communication and coordination is integral to the PA's success at both systemwide and Project levels. To achieve this, PA participants need clear, agreed-upon roles and responsibilities that are consistent across staff transfers and replacements, as follows:

- A. *Internal Communication and Coordination among the Lead Federal Agencies.* The principal formal forum for communication between the Lead Federal Agencies is the Cultural Resources Subcommittee (CRSC) of the Joint Operating Committee (JOC). The CRSC is an internal Lead Federal Agency group and is not open to regular outside participation. The CRSC operates using processes and protocols defined pursuant to the direct funding agreements, related memoranda of agreements, and the JOC, and are described further in the Handbook. **Comment: The Kalispel Tribe of Indians concurs that it is prudent and reasonable that the Lead Federal Agencies should have a dedicated and deliberative body that can advocate for the resource at**

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the regional level; articulating the common concerns and assure that the best management practices are consistently followed throughout the system. That said, we note that Ms. Miles' (Nez Perce Tribal Executive) comment of 27 December 2005 on an earlier draft of this agreement that "The [CRSC] functions in a vacuum... [and its deliberations are held] in secrete..." has not been adequately responded to. As a philosophical issue, public service needs to concern itself with not only virtue but the appearance of virtue. Certainly a Tribal seat at the CRCS may prove problematic and may encroach upon "executive privilege"<sup>5</sup> yet ultimately the issue is a matter of transparency in the decision making process. We strongly recommend that the proceedings of the CRSC be transcribed<sup>6</sup> and made available to the cooperating groups and thereby maintain a clear line of sight between interested parties and insulate the CRSC participates from false claims of duplicity. We note that a variation of this recommendation has been previously provided by Dr. Robert G. Whitlam (Washington State's Department of Archaeological and Historic Preservation) on 1 February 2006 relative to an earlier draft of the agreement document.

B. *Communication between the Lead Federal Agencies and Consulting Parties.*

Consulting parties shall be provided the opportunity to participate in the development and implementation of agreements, management plans, and activities developed under this PA. One mechanism for communication between the Lead Federal Agencies and consulting parties to allow for this participation is the Cooperating Groups.<sup>7</sup> The Cooperating Groups serve as a regular forum in support of intergovernmental communications for the purpose of exchanging views, technical information, and planning advice relating to the Lead Federal Agencies Section 106 compliance. An exception is definition of procurement implementation, which remains the sole responsibility of the Lead Federal Agencies. Each group has or will prepare Operating Guidelines and meet no fewer than four times per year on a schedule agreed upon by that group. Communication within the Cooperating Groups does not replace consultation pursuant to 36 C.F.R. Part 800 or Government-to-Government consultation with tribes as appropriate. The Operating Guidelines for each group describe the scope of discussion within that group. The Cooperating Groups assist the Lead Federal Agencies by:

1. Providing suggestions and perspectives as to planning and management priorities for Section 106 compliance.

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<sup>5</sup> cf U.S. vs. Nixon 418 U.S. 688 (1974); wherein Chief Justice Warren Burger noted, "...experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interest to the detriment of the decision making process."

<sup>6</sup> Such transcription need not be verbatim but summary in nature less the concerns as expressed by Chief Justice Burger come to fruition (see preceding footnote).

<sup>7</sup> Cooperating Groups were established by Lead Federal Agencies following signature of the SOR RODs in 1997. The Cooperating Groups active at time of signature of this Systemwide PA are:

- One group for Bonneville, John Day, and The Dalles Projects ("Wana Pa Koot Koot")
- One group for Dworshak, McNary, Little Goose, Lower Granite, Lower Monumental, and Ice Harbor Projects ("Payos Kuus Cuukwe")
- One group each for Hungry Horse, Grand Coulee, Chief Joseph, Libby, and Albeni Falls Projects.

2. Providing input to aid with determining the Project-specific portion of the APE.
3. Participating in drafting plans and schedules for activities to implement this PA.
4. Helping to draft or review the PA or HPMP, and Annual Work Plans for the associated Project.
5. Drafting or reviewing other plans that may be needed to conduct interim compliance.
6. Providing data and reporting accomplishments to incorporate into the Annual Report.

The Lead Federal Agencies retain final decision making authority for actions recommended by the Cooperating Groups.

- C. *Cooperating Group Obligations.* All members of the Cooperating Groups have an obligation to provide timely input and responses to the group. For each product, the Cooperating Group will define a schedule for actions contributing toward preparation or review of the product. Failure by a Cooperating Group member to meet a schedule milestone will not prevent the activity from going forward. A decision by the Lead Federal Agencies to proceed in such circumstances is not a violation of this PA.
- D. *Relationship of CRSC and Cooperating Groups.* Members of the CRSC, appropriate to jurisdiction, are also members of the Cooperating Groups. The CRSC will ensure that pertinent information from the Lead Federal Agencies, the JOC, as well as the other Cooperating Groups is shared at group meetings and annual meetings. Regular information exchange between the Cooperating Groups, at the Project level, and CRSC, at the system level is essential to facilitating implementation of this Systemwide PA.
- E. *Annual Meeting.* The Lead Federal Agencies will continue to organize an annual meeting that serves as a forum for reporting annual accomplishments, sharing information, and discussing common issues. Participants will typically be all parties involved in the implementation of the PA and the interested public.

## **IX. PARTICIPATION OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

The ACHP will be involved consistent with the terms of this PA and its regulations. The Lead Federal Agencies will provide the ACHP with draft copies of all Project-specific PAs and HPMPs developed under the terms of this Systemwide PA to afford the ACHP the opportunity to review and comment. The Lead Federal Agencies will offer the ACHP the opportunity to be a consulting party to Project-specific PAs.

## **X. REVIEW OF THE PA**

- A. The Lead Federal Agencies will review the PA every five years from its effective date to ensure that its terms remain relevant and are being met. The Lead Federal Agencies will review the PA as follows:
1. The Lead Federal Agencies will prepare a summary of accomplishments and identify any potential issues. The summary will be distributed to the consulting parties to the PA, to Cooperating Group members, and to other potentially interested members of the public. The Lead Federal Agencies will then coordinate a general meeting (using the regular Annual Meeting if appropriate) to discuss and resolve any identified issues.
  2. Thereafter, if any signatory party provides written notice to the Lead Federal Agencies that the party wishes to consult concerning unresolved issues identified during the review, the Lead Federal Agencies will implement consultation consistent with 36 C.F.R. Part 800.
  3. The Lead Federal Agencies will prepare a summary of the outcome of discussion and consultation and distribute the summary to the consulting parties and any other parties who submitted comments.
  4. Following distribution of the summary, any signatory party may seek amendment, withdrawal or termination in accordance with Stipulations XII, XIII, or XIV of this PA.

## **XI. DISPUTE RESOLUTION**

- A. Should a signatory party raise an objection to or have a dispute regarding fulfillment of the terms of this Systemwide PA, that party will file a written objection with the Lead Federal Agencies. If the Lead Federal Agencies determine that the objection or dispute is specific to a Project, and does not have systemwide program implications, then the dispute will be resolved using processes defined in the pertinent Project-specific PA or HPMP. If the Lead Federal Agencies determine that the objection/dispute has systemwide program implications, or when no Project-specific PA or HPMP is yet in place, then the objection/dispute will be addressed using the following processes:
1. Upon receipt of a written objection or dispute from a signatory party, the Lead Federal Agencies will consult with the disputant to resolve the objection or dispute. The Lead Federal Agencies will also notify the other consulting parties of the objection or dispute.

2. If the Lead Federal Agencies cannot resolve the objection or dispute in consultation with the disputing party, then within 60 calendar-days of that determination they will forward to the ACHP documentation of the objection or dispute, a written proposal for its resolution, and request the ACHP's comment.
  3. Within 30 calendar-days of receipt of the written submittal, the ACHP shall exercise one of the following options:
    - a. Notify the Lead Federal Agencies that it will not consider the dispute or provide recommendations, in which case the Agencies may proceed with the proposed action; or,
    - b. Concur with the Lead Federal Agencies' proposed response to the objection/dispute, whereupon they may proceed in accordance with the agreed-upon response; or,
    - c. Provide the Lead Federal Agencies with recommendations, which those Agencies will take into account in reaching a final decision regarding response to the objection/dispute.
  4. Should the ACHP not exercise one of the foregoing options within 30 days of receipt of the written submittal, the Lead Federal Agencies may assume that the ACHP concurs with their proposed response to the objection, advise the objecting party of that response, and proceed with their action in a manner consistent with that response.
  5. Upon reaching their final decision, the Lead Federal Agencies will notify the objecting party, the ACHP, and the other consulting parties under the PA of their decision and proceed with their action.
  6. The Lead Federal Agencies shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the Lead Federal Agencies' responsibility to carry out all actions under this PA that are not the subject(s) of the dispute or objection shall remain unchanged. While the dispute is being resolved, the PA continues in effect without change or suspension.
- B. Should a written objection be filed by a concurring party to this Agreement, and if the Lead Federal Agencies determine the objection or dispute is specific to a Project-specific PA or HPMP and does not have systemwide program implications, then the dispute will be resolved using the processes defined in the pertinent Project-specific PA or HPMP. If the dispute has systemwide program implications, or when no Project-specific PA or HPMP is yet in place, then the Lead Federal Agencies will notify the other signatories of the objection, and provide an opportunity for comment. The Lead Federal Agencies will render a decision regarding the objection, taking into account the comments, if any, of the signatories.

- C. Should a written objection be raised by a member of the public pertaining to the implementation of this Systemwide PA, if the Lead Federal Agencies determine the objection or dispute is specific to a Project and does not have systemwide program implications, then the dispute will be resolved using processes defined in the pertinent Project-specific PA or HPMP. If the dispute has systemwide implications, or when no Project-specific PA or HPMP is yet in place, and the Lead Federal Agencies determine that the objection is not frivolous, then the Lead Federal Agencies will notify the signatories to this PA. The Lead Federal Agencies will then take the objection into account, consulting with the objector and with the other signatory parties to resolve the objection. The Lead Federal Agencies will then render a decision regarding the objection. Should the Lead Federal Agencies determine that the objection is frivolous, they will so notify the objector in writing, and may proceed with no further consideration of such objection.
- D. If the ACHP or a SHPO/THPO is contacted by a consulting party or by a member of the public to discuss a significant concern or objection about implementation of the terms of this PA, the contacted entity will notify the Lead Federal Agencies of the issue.
- E. Disputes or objections that are Project-specific and do not implicate systemwide issues shall not be a basis for termination of this Systemwide PA. If the outcome of Project-specific dispute resolution results in proposed changes to the terms of the Systemwide PA, then the process of Amendment under this Systemwide PA shall be followed.
- F. Disputes or objections among the Lead Federal Agencies that are not resolved by the Lead Federal Agencies internally and that are determined by one or more the Lead Federal Agencies to affect implementation of this PA will be documented in writing and will be provided to all signatory parties. Once distributed to the signatory parties, the Lead Federal Agencies will seek to resolve the dispute using the dispute resolution processes of Stipulation XI. If the dispute remains unresolved after completion of this process, a Lead Federal Agency may terminate this PA in accordance with Stipulation XIV.

## **XII. AMENDMENT**

- A. Any signatory party to this PA may request in writing to the Lead Federal Agencies that the PA be amended. If the Lead Federal Agencies determine that the request is pertinent to this Systemwide PA, as opposed to a Project-specific PA or HPMP, then the Lead Federal Agencies will initiate consultation with the consulting parties to this PA to consider such amendment.
- B. If the Lead Federal Agencies decide to propose an Amendment to this Systemwide PA, the Lead Federal Agencies will consult with the signatory and concurring parties in accordance with the procedures of 36 C.F.R. § 800.14(b)(2) for developing PAs. If the request is determined to be specific to a Project, then the requesting party will be directed to use the Amendment process defined in the appropriate Project-specific PA or HPMP.

## **XIII. WITHDRAWAL OF PARTICIPATION**

- A. Any signatory or concurring party to this PA may withdraw from the PA by providing the Lead Federal Agencies 90 calendar-days written notice, stating the reasons for withdrawal. During the 90 days that precede withdrawal, the Lead Federal Agencies will consult with the party to identify any mutually acceptable measures that would avoid the party's withdrawal. If mutually agreeable measures are identified, then they will be presented to the signatory parties for consideration. If needed, there would then be broader consultation involving consulting parties to the Systemwide PA in accordance with the Amendment procedures for this PA.
- B. If mutually acceptable measures are not identified and a party withdraws, the Lead Federal Agencies and ACHP will review this PA to determine if it needs to be amended. If amendment is needed, processes defined in Stipulation XII would apply. Withdrawal by a signatory party shall only terminate application of the Systemwide PA within the area of jurisdiction of that entity.

## **XIV. TERMINATION**

- A. This Systemwide PA may be terminated by mutual agreement of the Lead Federal Agencies at any time upon written notification to all consulting parties. It may also be terminated by any signatory party within its area of jurisdiction, in accordance with the withdrawal stipulation. The ACHP can also terminate the agreement pursuant to 36 C.F.R. § 800.14(b)(2)(v), if it determines that the Lead Federal Agencies are not carrying out the terms of the PA.
- B. If this agreement is terminated, the Project-specific PAs created under the umbrella of this Systemwide PA would be reviewed by the Lead Federal Agencies and the ACHP in consultation with the consulting parties to the Project-specific PA to determine if it

could remain in effect. If a Project-specific PA does not remain in effect, and if no other appropriate PA or MOA is in effect at a Project, then the Lead Federal Agency with Project jurisdiction, or the Lead Federal Agency with Project jurisdiction and BPA, shall comply with 36 C.F.R. Part 800 with respect to all undertakings at that Project that would otherwise have been addressed by this PA.

## **XV. AUTHORITIES, EFFECTIVE DATE, AND OTHER PROVISIONS**

- A. This PA does not supersede or replace pre-existing Section 106 agreements relevant to the 14 Projects.
- B. Nothing herein shall be construed as obligating the Lead Federal Agencies to expend funds or involve the United States in any contract or other obligation for future payment of money in excess of or in advance of appropriations authorized by law and administratively allocated for this work. Nothing herein shall be construed as obligating the Lead Federal Agencies to implement actions or expend funds other than as authorized by NHPA or other applicable law, or to utilize processes other than those approved for the agency. Authorities to expend funds or to conduct other activities may differ between the Corps, Reclamation, and BPA.
- C. 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 landowners. Nothing herein shall be construed as a waiver of sovereign immunity by a tribal party to this Systemwide PA. Nothing herein precludes tribes from seeking Government-to-Government consultation with the Lead Federal Agencies independent from the processes defined in Systemwide PA.
- D. Execution of this Systemwide PA, and implementation of its terms, evidences that the Lead Federal Agencies have taken into account the effects of the undertaking on historic properties and have afforded the ACHP a reasonable opportunity to comment on the undertaking.
- E. This Systemwide PA will become effective on the date that it has been signed by the Lead Federal Agencies and the ACHP. The Lead Federal Agencies will ensure that each consulting party is provided a copy of the fully executed PA. This PA may be executed in any number of counterparts, each of which when executed shall be deemed to be an original, and all of which when taken together shall constitute one and the same agreement.
- F. All actions taken by the Lead Federal Agencies in accordance with this Systemwide PA are subject to the availability of funds, and nothing in this PA shall be interpreted as constituting a violation of the Anti-Deficiency Act.

**SIGNATORIES TO THE SYSTEMWIDE PROGRAMMATIC AGREEMENT:**

U.S. Army Corps of Engineers, Northwestern Division

By \_\_\_\_\_ Date \_\_\_\_\_

Title:

Bonneville Power Administration

By \_\_\_\_\_ Date \_\_\_\_\_

Title:

Bureau of Reclamation, Pacific Northwest Region

By \_\_\_\_\_ Date \_\_\_\_\_

Title: Regional Director

Advisory Council on Historic Preservation

By \_\_\_\_\_ Date \_\_\_\_\_

Title:

Idaho State Historic Preservation Office

By \_\_\_\_\_ Date \_\_\_\_\_

Title:

Montana State Historic Preservation Office

By \_\_\_\_\_ Date \_\_\_\_\_

Title:

Oregon State Historic Preservation Office

By \_\_\_\_\_ Date \_\_\_\_\_

Title:

Washington State Historic Preservation Office

By \_\_\_\_\_ Date \_\_\_\_\_

Title:

Tribal Historic Preservation Office, Confederated Tribes of the Colville Reservation

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

Tribal Historic Preservation Office, Nez Perce Tribe

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

Tribal Historic Preservation Office, Spokane Tribe of Indians

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

Bureau of Indian Affairs

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

U.S.D.A. Forest Service, Region 1

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

U.S.D.A. Forest Service, Region 6

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

National Park Service, Lake Roosevelt National Recreation Area

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

Coeur d'Alene Tribe

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

Confederated Tribes of the Colville Reservation

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

Confederated Salish and Kootenai Tribes of the Flathead Nation

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

Confederated Tribes of the Umatilla Indian Reservation

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

The Confederated Tribes of the Warm Springs Reservation of Oregon

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

The Confederated Tribes of the Yakama Nation

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

Kalispel Tribe

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

Kootenai Tribe

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

Nez Perce Tribe

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

Spokane Tribe of Indians

By \_\_\_\_\_ Date \_\_\_\_\_  
Title:

## ATTACHMENTS

Attachment 1: Authorized Purposes for the Columbia River Mainstem Projects

Attachment 2: Schedule to Implement Commitments in this Systemwide PA

Attachment 3: Glossary of Definitions for this Systemwide PA

Attachment 4: Checklists for Project-specific Historic Property Management Plans, Treatment Plans, and Annual Plans

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**Attachment 1****Authorized Purposes for the Columbia River Mainstem Projects  
And Lead Federal Agency with Jurisdiction**

Project	Operator/ Agency of Jurisdiction	Location	Year Completed	Type of Project	Authorized/ Operating Purposes
Libby	Corps	Kootenai near Libby, MT	1973	Storage	Flood Control, Power, Recreation
Hungry Horse	Reclamation	S. Fork Flathead, near Hungry Horse, MT	1953	Storage	Flood Control, Power, Irrigation, Navigation, Stream Flow Regulation, Recreation
Albeni Falls	Corps	Pend Oreille, near Newport, WA	1955	Storage	Flood Control, Power, Navigation, Recreation
Grand Coulee	Reclamation	Columbia, at Grand Coulee, WA	1942	Storage	Flood Control, Power, Irrigation, Recreation
Chief Joseph	Corps	Columbia, near Bridgeport, WA	1961	Run- of- River	Power, Recreation
Dworshak	Corps	N. Fork Clearwater, near Orofino, ID	1973	Storage	Flood Control, Power, Navigation, Recreation, Fish & Wildlife
Lower Granite	Corps	Lower Snake, near Almota, WA	1975	Run- of- River	Power, Navigation, Irrigation, Recreation, Fish & Wildlife
Little Goose	Corps	Lower Snake, near Starbuck, WA	1970	Run- of- River	Power, Navigation, Irrigation, Recreation, Fish

					& Wildlife
Lower Monumental	Corps	Lower Snake, near Kahlotus, WA	1970	Run-of-River	Power, Navigation, Irrigation, Recreation, Fish & Wildlife
Ice Harbor	Corps	Lower Snake, near Pasco, WA	1962	Run-of-River	Power, Navigation, Irrigation, Recreation, Fish & Wildlife
McNary	Corps	Lower Columbia, near Umatilla, Oregon	1957	Run-of-River	Power, Navigation, Irrigation, Recreation, Fish & Wildlife
John Day	Corps	Lower Columbia, near Rufus, OR	1971	Run-of-River and Storage	Flood Control, Power, Navigation, Irrigation, Water Quality, Recreation, Fish & Wildlife
The Dalles	Corps	Lower Columbia, at The Dalles, OR	1960	Run-of-River	Power, Navigation, Irrigation, Water Quality, Recreation, Fish & Wildlife
Bonneville	Corps	Lower Columbia, at Bonneville, OR	1938	Run-of-River	Power, Navigation, Water Quality, Recreation, Fish & Wildlife

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

The Lead Federal Agencies will seek to implement actions under this PA consistent with the following schedule. Schedules for completion of Project-specific PAs or HPMPs may be modified in consultation with signatories to this Systemwide PA with an interest in that Project.

ACTION	SCHEDULE
Annual Report to consulting parties	March 31 following performance year
Annual Meeting	Annually
Assess existing Project-specific PAs or HPMPs, and set schedule to update existing or prepare new PAs, as needed	Six months after effective date of Systemwide PA
Complete drafts or revisions of Project-specific PAs or HPMPs and circulate for review and comment	Two annually after effective date of Systemwide PA
Complete a draft Systemwide research design	Two years after effective date of Systemwide PA
Review the Systemwide research design	Every ten years after finalized
Review the Systemwide PA	Every five years after effective date

### Attachment 3

#### Glossary of Definitions for this Systemwide PA

**Adverse Effect** – an effect of an undertaking that “may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling or association. Consideration shall be given to all qualifying characteristics of an historic property, including those that may have been identified subsequent to the original evaluation of the property’s eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” 36 C.F.R. § 800.5(a).

**Advisory Council on Historic Preservation (ACHP)** – an independent agency created by Title II of the National Historic Preservation Act (NHPA), 16.U.S.C. § 470f. The review process established by NHPA Section 106, 16 U.S.C. § 470f, is conducted according to regulations issued by the ACHP, 36 C.F.R. Part 800, as authorized by 16 U.S.C. § 470s.

**Area of Potential Effects (APE)** – “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. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” 36 C.F.R. § 800.16(d).

**Concurring Party**—An entity with an interest in the subject matter of the PA and which executes the PA to signal its concurrence with the terms of the PA, but which does not have any authority or responsibility under the terms of the PA.

**Consultation** – “means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.” 36 C.F.R. § 800.16.

**Consulting Party**—Any entity that has a consulting role in the Section 106 process for the PA, as defined by 36 C.F.R. § 800.2(c). This may be a signatory party or a concurring party.

**Cooperating Groups**—Intergovernmental groups established by the Lead Federal Agencies to provide assistance to the Lead Federal Agencies in implementing Section 106 compliance activities in accordance with the provisions of each group’s operating guidelines.

**Cultural Resources Subcommittee (CRSC)**— A subcommittee of the Joint Operating Committee comprised of authorized representatives of BPA, the Corps, and Reclamation.

**Historic Property** – “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.” 36 C.F.R. § 800.16(1)(1), providing elaboration on the statutory definition codified at 16 U.S.C. § 470w(5).

**Historic Property Management Plan** – plans that are technical, substantive frameworks for describing and prioritizing Section 106 compliance activities and processes at the Project-specific level and which at a minimum contain the elements described in Attachment 4. When a Historic Property Management Plan is also serving as a Project-specific compliance document in lieu of a Project-specific PA, it must also contain the elements described in stipulation V.F.

**Indian Tribe or Tribe** – “an Indian tribe, band, nation, or other organized group or community, including Native village, Regional corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 16 U.S.C. § 470w(4).

**Interested Party**— An entity who either is a consulting party or who participated or was consulted in the development of this PA; an interested party can include members of the public. See 36 C.F.R. § 800.14(b)(2)(ii).

**Joint Operating Committee**—the committee comprised of authorized representatives of BPA, the Corps, and Reclamation that coordinate the direct funding agreements between BPA and the Corps and BPA and Reclamation, respectively.

**Lands (Federal Fee)** - any lands, other than tribal lands, where the United States holds fee title to the property.

**Lands (With Federal Legal Interest)** – easement lands, leased lands, or any land where the U.S. Government has a right to use property for a specific purpose, but does not own fee title to the property.

**Minor Construction in Support of Operations** - includes construction for routine maintenance of the existing built environment and other project construction items with small annual aggregate footprints. Examples of minor construction include (but are not limited to) repair of fencing; installation and repair of traffic control features; repaving of parking lots, trails and access roads; refurbishment of plantings; repair or rebuilding of individual structures within existing footprints, replacement or installation of signs; repair of existing utility lines; repair of boat launch ramps and docks; repair of recreational

equipment; installation of check dams in existing ditches. The term excludes capital projects (large and small) and any work requiring separate authorizations, or routine construction with large annual aggregate footprints.

**National Register** - The National Park Service through the authority of the Secretary of the Interior maintains the National Register of Historic Places. Sites are determined eligible for listing on that Register using criteria defined in 36 C.F.R. § 60.4.

**Project Boundaries/Lands**—includes fee lands acquired by the U.S. Government for the construction and operation of Federal dams and reservoirs for Congressionally authorized purposes (as outlined in Attachment 1); the dams and reservoirs themselves; other lands associated with those dams and reservoirs where the U.S. Government has a legal interest; and, all facilities therein or thereon such lands.

**Project Operations** – see “undertaking” defined below.

**Project-specific Programmatic Agreement** – a Project-specific Programmatic Agreement that is focused on the process and policy of the Section 106 compliance activities and contains the elements of Stipulation V.F.

**Reservoir** - a body of water impounded by a dam and operated for water storage, as well as other purposes. This differs from Lakes, which is a body of water impounded by a dam and where storage is not a Project purpose. The reservoir or lake boundary fluctuates between authorized minimum and maximum pool levels.

**Signatory Party** – An entity who executes the PA and has authority or responsibility under the terms of the PA.

**State Historic Preservation Officer (SHPO)** – “the official appointed or designated pursuant to Section 101(b)(1) of the NHPA to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.” 36 C.F.R. § 800.16(v).

**Tribal Historic Preservation Officer (THPO)** – the official appointed or designated by an Indian tribe to implement the Tribal Historic Preservation Program. The term applies only for tribes on the National Park Service list that, in accordance with Section 101(d)(2) of NHPA, have formally assumed the responsibilities of the SHPO for purposes of Section 106 compliance on their tribal lands.

**Traditional Cultural Property (TCP)** – a property that is “eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community.” The property must meet the requirements defined in 36 C.F.R. § 60.4. National Park Service, National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties (1990).

**Treatment** – actions taken by a Federal agency to mitigate or resolve adverse effects on historic properties. 36 C.F.R. § 800.6.

**Tribal Lands** – “(A) all lands within the exterior boundaries of any Indian reservation; and (B) all dependent Indian communities.” 16 U.S.C. § 470w(14). For the purposes of implementing this PA, the Lead Federal Agencies assume that “tribal lands” includes lands held in trust by the United States for a tribe external to the boundaries of a reservation if the lands are under Federal superintendence, but does not include allotments external to the boundaries of a reservation.

**Undertaking** – “a project, activity, or program funded in whole or in part under the jurisdiction of a Federal agency, including those carried out with Federal financial assistance; those requiring a Federal permit, license or approval.” 36 C.F.R. § 800.16 (y). For the purposes of implementing this PA, the undertaking is defined as all project operations (reservoir management and implementation of Minor Construction in Support of Operations), including future modifications to the operating regime of the any or all of the 14 projects. The undertaking does not include non-routine maintenance and other new construction, nor does it include BPA’s distribution of power (transmission system) off of Project lands.

## Attachment 4

### Checklists for Historic Property Management Plans, Treatment Plans, and Annual Plans

#### Historic Property Management Plans

At a minimum, an HPMP or its supporting materials will contain the following:

- A research design that provides an historic context for property evaluation for eligibility to the National Register. The research design will define research domains or historic themes applicable to the area (tiering from the Systemwide Research Design), define characteristics of property types associated with historic themes, and identify data gaps.
- A summary of significant past investigation and management activities, and a list of associated products.
- A list of historic properties, with their National Register eligibility status indicated.
- Information about property types present.
- Discussion of the nature and source of agents impacting resources.
- Further actions needed to identify, evaluate, and manage historic properties. General long-term priorities should be identified
- A process for integrating TCP research with the archeological and historical site identification and evaluation activities.
- Inventory and evaluation strategies for all potential property types.
- Historic property management and treatment strategies that might be used, consistent with the treatment/recovery plan principles described below
- A curation plan.
- A process to update records to reflect new data.
- A process for peer review of potentially significant research or educational products.
- A process for public outreach and education, including Heritage Tourism opportunities.
- General standards for field work, analysis, reporting, and site treatment.
- A general schedule for long-term completion of compliance requirements.

The HPMP may also include, as appropriate, relevant Lead Federal Agency commitments pursuant to other cultural resource requirements, including, for example, Section 110 of the NHPA, the Archaeological Resources Protection Act, and Section 3(d) of the Native American Graves Protection and Repatriation Act addressing inadvertent discovery or intentional excavation.

### Treatment Plan Principles

- Treatment plans will be prepared for properties determined eligible to the National Register.
- Plans may be prepared for individual properties or for groups of properties, as determined most efficient and effective by the Lead Federal Agencies, in coordination with the appropriate SHPO/THPOs.
- Where there are multiple sites, selection of sites for preparation of treatment plans will be prioritized based on a consideration of an array of factors, including the potential to yield important new information about, or insight pertinent to, a defined research objective or historic context, historical or cultural significance, physical integrity, degree of endangerment from the undertaking, and land ownership. Implementation of treatments will be prioritized using these same factors.
- Except perhaps for TCPs as discussed below, plans will be prepared with input and assistance from the Cooperating Groups. Consulting parties to this PA, as well as other interested parties as determined necessary by the Lead Federal Agencies, will also be invited to provide input.
- If the property is a TCP and is on tribal land, the nature of involvement by parties other than the Lead Federal Agencies and that tribe will be determined in consultation with the tribe. The SHPO would be involved if the TCP was on lands outside of reservation boundaries. It is expected that in these cases that other interested parties would not be invited to participate in plan definition or preparation.
- The Lead Federal Agencies will consider a wide range of options for treatment for the diverse range of property types. Consideration will include, but is not limited to: site protection or stabilization; scientific data recovery; historical or oral history research to document characteristics and cultural values; analysis of existing collections; monitoring; and preparation or presentation of public educational materials or opportunities. Final selection of the option or options will be based, but not be limited to: the National Register criteria under which a property has been determined eligible for listing; feasibility; and, cost. When a property is on land not held in fee title by one of the Lead Federal Agencies, on-site treatments or treatments involving public or tribal access can occur only with permission from the landowner. **Comment: Again we remind the Lead Federal Agencies that they have additional legal capabilities to affect positive change for the conservation of historic properties including but not limited to; condemnation of real property, permit conditioning, and negotiated easements. Although this agreement document by necessity limits itself to a range of actions that the Lead Federal Agencies can “unilaterally” take, the evolution of public policy in both the State and Municipal arenas are creating additional opportunities and capacities**

within the region wherein team building and mutual support for problem solving tasks are becoming more common.

### **Annual Work Plans**

The Annual Work Plan for each Project shall be developed by the Lead Federal Agencies in coordination with the appropriate Cooperating Group. At a minimum, the Annual Work Plan shall include:

- A prioritized list of proposed historic properties compliance activities for the year.
- An estimated level of effort for each activity and proposed cost.
- Methods to accomplish the activity (i.e., contract or in-house agency labor).
- Proposed start/finish dates.



# Oregon

Theodore R. Kulongoski, Governor

## Parks and Recreation Department

State Historic Preservation Office

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8 January 2007

Kimberley St. Hilaire  
Bonneville Power Administration  
P.O. Box 3621  
Portland OR 97208-3621



Re: FCRPS Draft PA

Dear Kimberley,

Having received the latest draft of the Federal Columbia River Power System (FCRPS) Programmatic Agreement (PA), and having our meeting scheduled for today to discuss our comments, I wanted to list a few of my initial questions/comments regarding this new document prior to our meeting. Specific questions regarding the draft PA are addressed below. A more general question, however, remains from our office's earlier response in that we still fail to comprehend the purpose of having such a large system-wide PA. The draft PA states that it is intended to streamline the 106 process but in actuality all it does is lays out the typical 106 process that is routinely followed in all 106 cases. No details regarding streamlining are mentioned. I find that the draft PA still offers no real substance, aside from acknowledging a willingness for the Lead Federal agencies and signatories to agree to work in the future and directs the signatories to await future PA development. As mentioned in our agency's earlier comments, Programmatic Agreements are first and foremost based on a needs basis that must be clearly defined. I fail to see any needs addressed by the current document. My comments below attempt to address questions regarding my agency's comments on the earlier draft and those regarding the current draft PA. I have just obtained a copy of a system-wide PA for the Missouri River system and in several cases will refer to it within my comments as an example of how issues could be approached differently.

Regarding resolutions to earlier comments made by our office (25 November 2005 letter):

Comment # Comment on proposed resolution

- 1 Streamlining of PA? Resolution provides no substance to address streamlining need. Resolution states that PA provides a framework for future streamlining. I see nothing more than the normal Section 106 process offered here. The PA remains very general in nature with no real substance.
- 9 Our office has still not received the Handbook for Federal agencies that was requested in 2005 (in spite of the resolution saying that it has been completed).
- 13 Resolution states that project-specific PA's will include specific minor activities exempted from consultation. I have no problem with this but than why again are we attempting to draft an over-all PA? I see no purpose in working on the current PA unless some streamlining processes or exemptions are included. Your answer to comment 1 provided no real response to this very important and legitimate question.

- 17 Our office continues to disagree with the need for the PA. The larger PA appears to offer no structure and consistency that is not inherently within the Section 106 process.

Revised PA General Comments

The initial portion of the PA includes a number of Whereas statements outlining the basis for the document. The 5<sup>th</sup> Whereas appears to state that the PA is only intended for coordinated projects between all three Lead Federal agencies. Is this what is intended or is the PA to address any projects within the river system conducted by any of the agencies (i.e., not necessarily only those coordinated)?

My specific review comments regarding PA stipulations are listed below:

<u>Stipulation</u>	<u>Page</u>	<u>Comment</u>
I-C	4	This PA is not needed to provide a mechanism for streamlining the Section 106 process. I think that is what the project-specific PAs are intended to do.
I-D	4	This is to be the key behind any PA. However, you offer no substance in this PA to address such streamlining. If you are indeed seeking system-wide consistency why not identify specific routine actions that are common throughout the 14 projects and include exemptions or methodologies for addressing such tasks in this PA? That would provide substance and meaning to this otherwise hollow document.
II-A	4-5	This entire section is a summation of general Section 106 principles and are nothing new to the process or special to this PA.
II-A2	4	“Principle causative factor”? How does one quantitatively acknowledge and measure such things? What is meant by this statement and how do the federal agencies intend to address it?
II-A5	5	“Seek to avoid or minimize adverse effects on historic properties when feasible and cost effective”? What does this statement mean to say? I would suggest eliminating the last portion of this statement and simply state that federal agencies will seek to avoid or minimize any adverse effects to historic properties.
II-A7	5	I suggest including evaluation under the list of tasks federal agencies will consult with appropriate SHPO/THPOs (e.g., identification, treatment).
II-A8	5	You mention the need and intention of defining procedures to address emergencies and inadvertent discoveries in the project-specific PAs. Isn't this something that can perhaps be addressed in this larger system-side PA and thus give it meaning and purpose?
II-B	5	Having federal agency staff who meet professional qualification standards has been a problem raised with the lead federal agencies often in the past. This statement is supported by federal law and not something new to this PA.
II-C	5-6	What is the public benefit offered through this PA. If this is indeed one of

- the intentions behind having the PA details on what types of outreach and education are being proposed are needed. Each of the components listed under this section appear to be things that will be addressed at more dam-specific project levels thus begging the question again of why the need for this PA in the first place.
- II-D 6 Consultation process should be better defined. There has been a history of poor coordination between federal agencies and tribes so this document should attempt to improve such a process by clearly defining when the 30 day review period begins (when notification is mailed out or received) and who would be notified (e.g., Tribal chairman, CR Program manager). Is consultation confined to letter writing or will there be other attempts through phone calls, visits, etc.? The Missouri PA (p4) includes the designation of PA representatives for each agency. Could this be a way of designating key contact personnel to coordinate future consultation? This PA also defines that review period begins upon receipt of consultation request and outlines pre-consultation actions and consultation guidelines, which I believe, should be adopted here.
- II-E 6 Oregon SHPO still believes that a 30 year period is too long and prefers no PA to extend over a 15 year period. You state that there will be a review of the PA every 5 years. How are you defining a review? Consultation and meeting with all signatories or simply a letter sent to suggest comment? The former is recommended.
- III. A-D 7 The definition of the APE should take into account all areas where an undertaking has the potential to effect historic properties, either directly or indirectly (including any cumulative effects).
- IV-A 7 [Second sentence] Priorities should be set in consultation with tribes and consulting parties. If Tribes choose not to sign PA this does not eliminate need for federal agencies to include them from the consultation process.
- IV-B 8-9 This section attempts to lay out a prioritization process based on data that I do not believe the federal agencies have. Do we know who owns what lands along the Columbia River? Are we aware of what sites retain scientific and cultural importance, and if so, to whom (e.g., academic community, tribes, nation-at-large)? Because of the sheer number of sites along the river's reach I do not believe that previous efforts have gathered sufficient information to have the data needed to establish the priority list as defined in the PA.
- IV-B(1b) 8 What process will be used to check on obtaining access to historic properties? This has largely been ignored by the Corps in the past who isn't aware of what lands they currently own along the Columbia. Priority also seems to be given based on accessibility rather than importance of site.
- IV-B(2b) 8 You are assuming that the importance (scientific or cultural) of an historic property is already known. Will there be any attempt to evaluate properties first so that we will have sufficient information to make this determination?
- IV-C 9 How do federal agencies propose evaluating TCPs as to their cultural

importance? Are they going to assume that they can rate tribal feelings? You are wading into sticky ground here and I would suggest caution when attempting to outline prioritization of TCPs. I would simply include that this process will be coordinated with appropriate tribal and ethnic communities and avoid any mention of the federal agencies attempting to rate them as to their importance.

- V 10-12 Participating agencies (including federal, state and tribal) really needs to discuss what an HPMP is. Past examples have been less than worthwhile in many instances. If focus is to be placed on their construction and evaluation (& I believe this should happen) better structure needs to be provided for system-wide use. I believe the Missouri PA discussion on CRMPs provides a good example as the type of details we should include in this PA. Rather than simply mention that the issue needs to be addressed why not lay out some design and timeline fundamentals that can be used for the entire reach? All essential criteria that needs to be addressed within the river system is being put off to the project-specific PAs. If you are going to demand that a system-wide PA exists, some of these topics may be more appropriate for this larger PA. Monitoring? Inadvertent Discovery Plan? Consultation? Education programs? Signage? Curation?
- V-F(1) 11 This section focuses on "affected" areas when by law it should be including "potentially affected" areas. I believe that we should be erring on the side of caution rather than arguing about whether something is truly an effect or not.
- V-F(3) 11 The issue of prioritization of historic properties is again a sticky wicket and needs to be better defined in consultation with all parties rather than simply relying on the prioritization outline included in this PA – especially in regards to TCPs. I believe this PA is too much a product of federal agencies pulling something together rather than really consolidating input from others. More emphasis should be placed on modeling existing PAs such as Missouri's.
- V-F(4) 11 Previous discussions with other FERC dam related projects (e.g., Hells Canyon) has shown that defining a process for determining what is an effect of an undertaking and what is due to other factors (e.g., periodic flooding, storm damage) is an extremely difficult and contentious one to make.
- VI 12 System-wide research design: While this may sound like a laudable task, and may be easy to conceptualize when addressing above-ground historic resources, what type of archaeological research questions can realistically be posed that would be appropriate for the entire reach? None but the most general and not very noteworthy topics come to mind. The system crosses major topographic and cultural borders and has more differences rather than commonality over time. How does one complete a research design to address TCPs? If you want to use this to focus on historic development I can see merit in such an approach but it should be more clearly defined as such.

- VI-C 13 Review of the Missouri PA (p15) is conducted on an annual basis. Here you are proposing every 5 years and the system-wide research design be reviewed every 10. The way staff changes appear to affect all participating agencies I would think we should be stressing the need for more frequent review rather than less.
- VII-A 13 What is the purpose behind compiling an annual report? To provide tables of acres surveyed and sites recorded or to address issues that are found to be affecting historic properties throughout the system and the methods employed (successfully or unsuccessfully) to address their identification, evaluation, enhancement, monitoring, and/or protection? I think both have their place but believe that we need to get beyond a simple compilation of tabular data and begin to focus on what we are trying to accomplish. If we simply list numbers in tables we will never achieve a sense of accomplishment nor benefit from other's experiences. That is what we have been trying to address at the annual FCRPS meetings but have yet to find an effective method of distilling the process for such a large area affecting so many different agencies and tribes. This though is what we should be focusing on! What are the adverse effects to historic properties along the river system and how are we addressing them? In what ways should our approach be changed or modified?
- VII-C 14 Here is mention of the Handbook on consultation procedures that our office requested a copy of in our earlier comments. We would still like to obtain a copy for review and information.
- VIII-B 14 Consultation between consulting agencies and tribes should be different. Your relationship to them is on a government-to-government basis and should be discussed separately from that with other consulting agencies. This is mentioned later on page 15 but it should be clarified in the beginning of the section.
- VIII-B 15 (1<sup>st</sup> full sentence) An exception is definition . . . . I think you mean that an exception to the consultation process with consulting parties is how it deals with procurement implementation. This should be clarified. It is confusing as written.

In summary, I regret that I find that the need for a system-wide PA is still not adequately addressed and that the current PA offers little of value. If a system-wide PA is needed some streamlining of processes should be included to provide it merit rather than simply a regurgitation of normal Section 106 procedures. If the focus on any noteworthy discussion is to be put off until the design of project-specific PAs then that is where our efforts should be placed and not on attempting to push through a larger PA that serves no real purpose.

If you have any questions regarding any of the above comments or would like additional information from our office concerning my review, feel free to contact me at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Griffin". The signature is written in dark ink and is positioned above the typed name.

Dennis Griffin, Ph.D., RPA

State Archaeologist

(503) 986-0674

[dennis.griffin@state.or.us](mailto:dennis.griffin@state.or.us)

cc. Roger Roper, OR SHPO  
Sarah Jalving, OR SHPO



# MONTANA HISTORICAL SOCIETY

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Thursday, January 11, 2007

KIMBERLY ST.HILAIRE  
DOE BPA  
POB 3621  
PORTLAND OR 97208-3621

RE: FCRPS PA draft

Dear Lynne, Gail and Kimberly:

Thank you for setting up the phone conference regarding the draft FCRPS PA on 01/08/2007 and the invitation to provide written comments thereafter. Frankly I had not planned to make written comment, and may have recommended to the MT SHPO that the agreement was signable as is (or was). Because of the wide range of issues and concerns highlighted during the phone conference among a relatively few participants of the proposed PA I decided to offer comment in support of the PA. My thoughts may be useful as a sort of a rambling sounding board – they are not intended to be hard and fast recommendations for change.

Interestingly enough the MT SHPO asked of the Missouri Main Stem PA – why? It is mostly just regular 106 stuff. The answer was the same I suppose as it is to those who ask why such a PA here. It is defining a new set of relationships among a number of parties, many of whom did not have equitable standing in all the old 106 stuff. Fair enough and important enough I think. What about the streamlining or lack thereof? Again I think the Main Stem PA has had the opposite effect to streamlining – at least up to this point – hard work consultation over very detailed and often “minor” actions – but necessary to overcome years of neglected or intentionally avoided communication among many of the interested parties. Here the payoff will be I think recognition of a more defensible use of the ACHP’s definition of APE and Undertaking. Pretty basic? Yes but how many years has that been an issue here in Montana (one state out of five) at just two of the 14 system projects – systemic and downstream effects notwithstanding. I’ll bet fifteen years at least. So yes I think an umbrella sort of PA that defines those key elements consistently across the system is useful. So...

Perhaps the “coordinated implementation” phrase (in the fifth where-as) is not clear to some but as I read it I can’t really see a better way to say it – the undertaking is the integrated system and all its purposes and operations large and small – which is what that where-as says. If there is a better way of saying it, well and good.

Under I.C. the word “discretion” might bother some for some of the same reasons mentioned in the first paragraph above. What is meant I think is the lead agencies have three options or alternatives under which they can implement their 106 responsibilities once the PA is executed? The first sentence in that clause will likely set up some misunderstandings and I suggest the streamlining reference be deleted there.



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Similarly stip. I.D. could create misunderstandings – since it appears that the project specific PA/HPMP are the only places where “categorical exclusions” or exemptions to consultation will be agreed upon. If so, that could be clarified. My own preference is to avoid catexs even in PAs if possible and define a protocol where such no properties actions are reviewed internally by a qualified and empowered specialist who reports on those decisions annually. If such a process is possible it should likely be defined in the specific PA/HPMP.

I think changing “adverse effect(s)” to effect(s) generally throughout the document would be very useful.

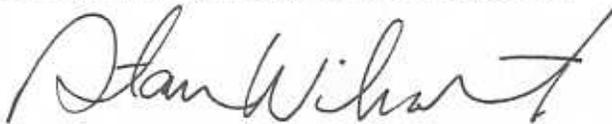
I think III.D. provides a good opportunity, with minor changes, to emphasize that the undertaking and its APE includes all system (and project) purposes and operations, and that all will be considered under the PA, specific PAs and or the HPMP or standard 106.

My clumsy and impromptu attempt during the phone conference to explain what I thought might the sources of other’s concern follow from the natural ambiguities of “undertaking” meaning all, and or any action in the FCRPS from coordinated water releases (and erosion) to minor/routine project maintenance actions (e.g. see fifth where-as) especially where others (e.g. NPS or USFS) are the land managing agencies. If there is any place in this system PA that leaves me uneasy it is cold reader’s or third hand parties’ ability, and maybe the forest or park service manager’s ability, to know when the FCRPS PA ends and the USFS R-1 PA begins. The mid tier roles of contracted agencies or other agents in some situations is unclear. I understand that specific PA/HPMP should clarify this – I’m not real sure that the draft Hungry Horse or Libby plans do so entirely. Is there a place here to make that issue clearer? I will definitely need to relook the draft HPMPs with that in mind. Certainly the eligibility issue is not clear or resolved in the Hungry Horse plan maybe as a related issue.

Is the handbook referred to at VII.C. built on the individual PA/HPMPs or is it systemic only? At some point there is clear utility it seems to me in having the handbook include specific project protocols.

Lastly, it might be useful to reiterate that lead agencies only have 106 authorities for eligibility, and other considerations, and that lead agencies should be consulting and notifying parties about those considerations above and beyond the cooperating group level (maybe at VIII.B.) That would apply to any contracted consultant work too I hope.

I extend to you all the same invitation to visit our conference table as you got from WA SHPO, and hope to see you all down the trail sometime,



Stan Wilmoth, Ph.D.  
State Archaeologist/Deputy, SHPO



Confederated Tribes and Bands of the Yakama Nation  
Established by the Treaty of June 9, 1855

Post Office Box 151  
Toppenish Washington 98948

January 9, 2007

Kimberly St. Hilaire  
Cultural Resources Program Manager  
Environment, Fish and Wildlife - KEC-4  
P.O. Box 3621, Portland OR  
97208-3621

**Subject: Federal Columbia River Power System Programmatic Agreement.**

Ms. Hilaire,

Listed in the table below are the Confederated Tribes and Bands of the Yakama Nations comments on the latest draft of the FCRPS PA.

5 <sup>th</sup> Whereas	The PA addresses the joint NHPA Section 106 compliance issue. The definition given for minor construction in support of operations is specific to COE NHPA Section 106 compliance issues and these minor construction projects cannot be exempted by this PA in its current form. Undertakings specific only to the COE or other federal agencies must be dealt with outside of this joint PA.
8 <sup>th</sup> Whereas	This PA should only address the joint compliance activities. Delete the last two sentences.
Now, Therefore	Adherence to the PA would satisfy they lead federal agencies joint NHPA Section 106 responsibility. Undertakings outside of the joint undertaking would not be covered.
I. B.	If all federal agencies would approach the federal statutes through the auspices of Trust Responsibility, then all federal laws, regulations, legislative acts, litigated decisions and executive orders.
I. C. D.	Please provide what joint Section 106 issues need to be streamlined.
II. A,3.	All federal lands must be inventoried.
II. A,5.	Will completely destroyed Historic Properties be addressed?
II. A,7.	The YN is an Affected Tribe, not simply an interested party.
II. D.	Conversely, Formal Tribal requests to the federal agencies must

Johnson Meninick  
 Cultural Resources Program  
 January 10, 2001  
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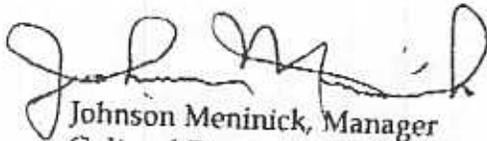
	also be bound to the same time schedule.
II. E.	A PA should not run for 30 years. A 10 year commitment is more acceptable. This commitment must contain a five year interval review along with options to review on a case by case basis.
IV. A. (point 10)	A research design is an unnecessary component for historic property evaluation. Different professional researches will identify separate themes for investigation thereby placing inherent scientific bias on the management of the archaeological record. We cannot predict what theoretical paradigms will be investigated in the future. We cannot predict how technological innovation will effect the scientific perception of archaeological deposits in the future. Therefore we are left with the question of <i>integrity</i> (listed in point 9). If the archaeological deposit has integrity and is able to answer scientific inquires, then it is eligible to the national register under Criterion D. Eligibility would still need to be investigated under the other available criteria if eligibility under criteria D was not met.
IV. C.	With Tribes as signatory participants in this PA, the identification, evaluation, and treatment of TCP's should be a driving theme of the PA.
IV. D.	The federal agencies must also commit to seek authorization to complete work on effected non-federal land.
V. B.	Again, compliance in regard to the joint undertaking.
V. E.	Although the YN is interested in this subject, legally the YN is an Affected Party due to the Reserved Treaty Rights that the YN reserved onto itself through the Treaty of 1855 (12 Stat. 951).
V. F. 5.	A research design should not be used as a guide for treatment plans. RD may be inserted under V. F. 8., and these researchers will have the benefit of their scientific institutions and grant opportunities for their specific projects.
VI.	Unnecessary, remove.
VIII. B.	Provide the documentation that led to the development of the working groups. These documents may have existing NHPA Section 106 implications.
XIII.	If an entity never signs the PA, will the PA not impact that entities effected area and status?

This PA was developed unilaterally by the federal agencies and the effected tribal parties have only been able to comment on the document. It would be in the spirit of the FCRPS working groups if the PA was developed cooperatively between all affected entities. A PA developed in this manner would look very different and would certainly address all

Johnson Meninick  
Cultural Resources Program  
January 10, 2001  
Page 3 of 3

tribal concerns. The YN Cultural Resources Program has recommended to our policy makers that this document should not be signed. If you have any questions please contact myself at (509) 865-5121 extension 4737.

Sincerely,



Johnson Meninick, Manager  
Cultural Resources Program

cc: Lavina Washines, Chairperson, Yakama Nation Tribal Council  
Johnny Smartlowit, Yakama Nation Cultural Committee Chairman  
Phil Rigdon, Deputy Director DNR  
Allyson Brooks, State Historic Preservation Officer  
Kate Valdez, Yakama Nation Tribal Historic Preservation Office  
Barbara Creel, Portland District COE



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

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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.

IIIB 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 IID 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?

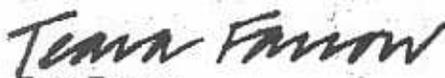
Earlier in this document, I suggested that the Agencies are wrapped up in the minutiae and losing track of the big National Historic Preservation Act picture. I fear that the CRPP is having the same problem. We feel that this would be a very different document if the Agencies, Tribes, and other consulting 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

The Confederated Salish and Kootenai Tribes

January 29, 2007

Gail Celmer  
Regional Archaeologist  
U.S. Army Corps of Engineers  
Northwestern Division  
Portland, Oregon (CENWP-PM-E)

Dear Ms. Celmer,

I apologize that these comments are a few days late, but still feel it is important to address the issues we discussed at the Spokane meeting on December 12, 2006. We also want to thank you for this opportunity to respond to the draft Programmatic Agreement for the Federal Columbia River Power System (FCRPS).

As I stated at the meeting I believe it is important for all participants to recall the commitments and intentions that were stated in the meetings from 1997 on that initiated the process we find ourselves in today. These initial commitments are not clearly reflected in the current PA. For example the Intertie Development and Use (IDU) is not mentioned in this PA. We need to reflect on past commitments and make sure we are all involved in setting a course into the future. Consultation is a tool to ensure this happens.

The second issue is the concern for the prioritization process. The current draft lists Traditional Cultural Properties (TCP) in what appeared to be a lower priority, behind archaeology. We were assured at this meeting that the list did not intend to put one site type or approach as more important than another, but there needed to be a tracking of priorities for funding. The major concern is that a PA is to design a unique approach to Section 106 of the National Historic Preservation Act (NHPA). The main focus for the last 27 years has been Criterion D and Archeology; there has been millions of dollars spent on this approach. We have numerous collections in curation facilities and each year Federal Agencies seem to struggle for funding to meet their curation responsibilities.

Yet the Federal agencies want to excavate more sites in areas where they already have representative samples. Lets look at what has already been collected rather than view excavation as the only alternative in the Section 106 process. Meanwhile sites that were eligible 27 years ago are eroding away and a cultural landscape continues to disappear.

The CSKT would like to see more creative mitigation done with an emphasis on Criteria A, B, and C. With this in mind a research design could be developed for the Columbia River System. Each tribe has place names, legends, and stories for the entire stretch of the Columbia River System. Water could be a main focus for it is the water that connects all of us. There are stories and some information that may not be appropriate to share, but each tribe could identify general information that could be used to enrich the project.

Another issue that is critically important to us is the review of collections to ensure that any culturally sensitive material, items of cultural patrimony, be identified and placed back where it came from or repatriated on the reservation if the original area is not accessible. We would like to see this addressed in the PA and the process identified.

We would like to see a paragraph clearly outlining the relationship between the FCRPS PA and the individual Project-specific PAs or HPMPs. If any issue in the FCRPS PA is not specifically identified in the project specific documents, which takes precedence? Take for example the issue of cultural patrimony.

The importance of consultation cannot be stressed enough. Discussing issues is the only way we can present our differing world-views and come to compatible solutions and avoid misunderstandings.

Again we thank you for this opportunity to express our comments and look forward to working with you in the future. If you have any questions please call me at (406) 675-2700.

Respectfully,

Marcia Pablo  
CSKT Historic Preservation Officer

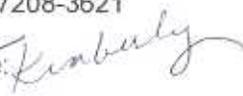
## THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON



Warm Springs, Oregon 97761 / (541) 553-2001/2002

January 26, 2007

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

Dear Ms. St. Hilaire: 

This letter is in response to the October 4, 2006 DRAFT Federal Columbia River Power System (FCRPS) Programmatic Agreement (PA) request for comments. First I would like to thank the U.S. Army Corps of Engineers (USACE), Bonneville Power Administration (BPA), and the Bureau of Reclamation (BOR) (the Agencies) for hosting the technical consultation meeting in Richland, Washington on December 13, 2006. The meeting proved to be a positive experience and helped define the perspectives of all parties in attendance. Again, I thank the Agencies and commend you all on your hard work.

As the cultural resource technical representative for the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO) I have reviewed the FCRPS PA draft and would like to provide comment as to the content of the document. Due to the complexity of this document and as a result of the December meeting where the Agencies stated that sections within the PA would need additional rewording and possible rewrite, I will refrain here from a line by line response. In addition, I do not wish to belabor the terminology utilized within the PA; however, I would like to make suggestions and comments that I feel, when answered, may help to further clarify the Agencies position. I would also like to have the opportunity to discuss specifics in another face-to-face technical meeting with the affected tribes and parties with the Agencies to review the document in detail, either the current document, or dependent on the language and content, the next draft.

A main concern is what the real intent of this PA is. Please let me make it clear that we understand that there are three diverse Agencies with three distinct missions and that there is a need to define each Agency's role and responsibility under the National Historic Preservation Act (NHPA) as it pertains to section 106; however, in our opinion the document says nothing more than we, the Agencies, are going to follow the section 106 process as it pertains to the defined *undertaking* and if it doesn't pertain to the *undertaking* each lead federal land manager will conduct their 106 responsibility separately from the FCRPS responsibility. Thus, the document is general in nature and doesn't describe if there is a delegation of authority from the Lead Federal Agencies down to the Project or District levels. This document, also, does not define an area of potential effect (APE). The Agencies leave this up to the individual Project Cooperating Working Groups to later define.

As stated in my January 17, 2006 comment letter, a system-wide PA should include those stipulations that are pertinent to the project as a whole, in this case the multi-state component of 36 CFR 800 § 800.14(b)(1)(i) is applicable. This should be a simple process defining those roles and responsibilities of the federal agencies with jurisdiction over the undertaking; 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. This office believes that this is still not clearly defined within the Draft PA as it is currently written. The document could be much simpler by clearly defining roles and responsibilities and combining sections. Therefore, I would like to discuss those items that we feel are not clearly defined, are missing, or may be unnecessary.

1. How will the three Agencies be *identifying* cultural resources? There is mention that within each Project individual PAs or Historic Properties Management Plans (HPMP) will be developed that will define the area of potential effect (APE), but there appears to be no delegation of authority to the individual Projects as the responsible party for compliance with section 106 of the NHPA?

If the intent is to have the delegation of authority on specific items, such as the Project PAs or HPMPs, which includes the APE, determination of eligibility, etc., state that in one location. This would include Stipulations III A, B, C, and D; IV A, B, C, and D; V A, B, C, and D,

2. *Accountability* – who is accountable for the actions under section 106 for the FCRPS? There is a general discussion of the three Lead Agencies – but what is the measure of their performance to section 106 compliance and who's performance is being measured?

3. *Responsibility* – who is responsible for section 106 compliance? How are the Agencies planning on meeting these responsibilities? Will there be a specific agency official that is responsible for the FCRPS 106 compliance who has specific responsibilities in his or her position description and performance standards?

For example: under Stipulation V. A. of the PA the Lead Federal Agencies will meet their section 106 responsibilities in any of three ways...; however, it is unclear as to who and in what capacity they are meeting their responsibilities. It is also unclear if the intent is to delegate the authority to the Project or District level.

4. *Stipulation VI. System-wide Research Design.* Understanding that there is a need for research objectives we do not feel that this is an appropriate course of action for this PA. First, the FCRPS system spans four states where a variety of geologic events have shaped the landscape creating major topographical differences. In addition there were and still are diverse cultural groups along the reach. A research design of this magnitude is overwhelming at best, there are so many differing factors that it would be a daunting task to compose research questions that would have any validity throughout the entire system. Additionally, and more importantly, this is a PA where Tribes are signatories because of their close relationship with the Columbia River system and the specific resources that are covered under the NHPA. We believe that asking to conduct a research design, which undoubtedly would include some form of defining Native cultures through the archaeological record, is not a very respectful and well thought out topic for this PA.

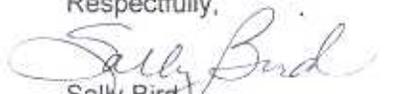
It is understand that during the December 12 and 13, 2006 meetings some tribes indicated that they would be willing to work within the parameters of a research design. With this in mind I suggest that research designs should be discussed at the Cooperating Working Group level and if it is determined that research is a reasonable avenue then this could be created at that venue. Taking it in smaller steps, defined research objectives based on region may allow for a larger review of the entire system and how the divergent groups historically co-existed. This is manageable benchmark that may provide a more comprehensive overview of the reach over time.

5. *Stipulation VIII. Consultation and Coordination.* This should have more of a tone of cooperation – instead the very first sentence states that the "Lead Federal Agencies retain final decision making authority..."; this tone does not indicate a cooperative view. It is clearly understood that the Agencies have the final decision making authority and, thus, there is no need to mention it within the PA. Furthermore, the way the section is written implies that there is no coordination or cooperation within the PA; though I don't think this is the intent.

What I would like to suggest, which I feel could make this a stronger section and would emulate consultation and coordination, is to include a good faith effort to include all parties within the PA process. Meaning, once the PA is signed there should be some mechanism to determine if this PA is meeting the needs of all the signatories not just the Agencies. I have found no mention of working with the signatories of this PA, which include Tribal, Federal, and State representatives, to discuss the compliance process and whether or not it is being met. Instead under *Stipulation X* the Agencies will review the PA every five years to insure that it remains relevant, this does not meet a cooperative agreement between signatories.

The WanaPa Koot Koot Cooperating Group has always been an exchange of ideas, working towards ensuring protection to resources that are important to Tribal communities, as well as the American public. As stated earlier the comments listed within this document are general and that in the spirit of this Cooperative Group it would be beneficial to the FCRPS process to have a second meeting with all affected parties to work through the document in a meaningful productive manner. At that time additional comments can be made and through cooperation and consultation, I believe a workable, meaningful PA could be created in very short order. Additionally, I would also like to stress that the benefit to an open and clear dialog early in the process for such a massive undertaking with such diverse groups is one that should be considered in the future for this specific document as well as like documents.

Respectfully,

  
Sally Bird  
Cultural Resource Manager

cc: Robert Brunoe, CTWSRO GM Natural Resources  
and Tribal Historic Preservation Officer  
Johnson Meninick, YN, Cultural Resource Manager  
Kate Valdez, YN, Tribal Historic Preservation Officer  
Teara Farrow, CTUIR, Cultural Resource Manager  
Carey Miller, CTUIR, Tribal Historic Preservation Officer  
Vera Sonneck, Nez Perce Tribe, Cultural Resource Manager  
Kevin Cannel, Nez Perce Tribe, Tribal Historic Preservation Officer  
Rex Buck, Wanapum Band  
Camille Pleasants, Colville Confederated Tribes,  
Tribal Historic Preservation Officer  
Marcia Pablo, Confederated Salish and Kootenai Tribes  
Randy Abrahamson, Spokane Tribe  
Kevin Lyons, Kalispell  
Dennis Griffin, Oregon State Historic Preservation Office  
Direlle Calica, Native American Liaison, USACE Northwest Division  
Gail Celmer, USACE Northwest Division  
Lynn MacDonald, U.S. Bureau of Reclamation  
Chuck James, Area Archaeologist, Bureau of Indian Affairs



## 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



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*Nez Perce*

## TRIBAL EXECUTIVE COMMITTEE

P.O. Box 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

January 26, 2007

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Boise, ID 83706-1234

Dear sirs:

Thank you for providing a copy of the draft Systemwide Programmatic Agreement (PA) for our review and comment. The PA appears to have markedly changed since the last draft. We believe many of these changes are for the better. However, we still have some questions and concerns regarding the document.

One of our main concerns is the lack of references to the importance of the tribes to the FCRPS cultural resource program. The tribes have invested significant amounts of time and money into this process. Much of the funding for the tribes' involvement in the process has been paid for by the tribes. Furthermore, if the tribes had not intervened in the scoping process of the System Operation Review, the FCRPS cultural resource program would simply not exist today. The historical and ongoing importance of the tribes to this process should be noted throughout the document.

Another general concern is the discrepancy in viewpoints between the ACHP and the agencies when interacting in the workgroups. During the meetings Tom McCulloch indicated that the tribes and the agencies can agree on categories or classes of properties that will be considered eligible for the National Register under the terms of the PA. However, it has been our experience that the agencies are extremely reluctant to do this and would rather invest substantial amounts of time and money in individually evaluating properties. Our assumption is that the



agencies would prefer to restrict the numbers and types of sites that are addressed through mitigation as much as possible. This is one of the key discrepancies between the agencies and the tribes. The agencies need to agree that sites that are buried under the reservoirs can still be considered eligible for the NRHP and that the fact that they are buried can be construed as an adverse effect.

A third, and final, general point is that throughout the discussion in Richland, the agencies repeatedly mentioned that discussion of topics including the PA and the research design mandated by the PA would have to occur at the system-wide level. However, there is no mechanism to do this. This is somewhat problematic for accomplishing some of the larger goals of the FCRPS cultural resource program.

The regulations (36 CFR 800.3(a) and 36 CFR 800.3(b)) require that the agency official consult with the SHPO/THPO in identifying additional consulting parties. There was some discussion of the role of consulting parties other than the SHPOs, THPOs, and tribes at the meeting in Richland on December 13. However, more discussion will likely be necessary.

Our specific comments on the PA follow:

Page

- 1 The block that lists the parties to the PA should at a minimum individually list all of the full signatories to the PA. In order for the PA to affect Nez Perce lands the PA requires the signature of the THPO. Thus the Nez Perce THPO should be specifically identified rather than listed as a consulting party.
- 1 Third “whereas”. In the first line change the word “those” to “these”.
- 1 Fifth “whereas”. This section is somewhat confusing in that only the operation of the power system can be characterized as truly “coordinated”. Other undertakings addressed here are coordinated either between BPA and the Corps or BPA and BOR. If other projects that involve BPA and Corps funding or BPA and BOR funding would they still be “coordinated”. Also, it is stated that the undertaking includes “future modifications to the operating regime.” This section needs to be more specific. We think the PA would no longer be in effect if the regime shifted away from the preferred alternative identified in the SOR EIS and stipulated in the RODs.
- 2 Sixth “whereas”. The statement “the undertaking causes or may cause” should be changed to “the undertaking has caused, is causing, and will cause” adverse effects. The RODs and SOR EIS note that adverse effects have occurred as a result of the undertaking.
- 2 Tenth “whereas”. The agencies are required to consult with the THPOs from the Confederated Tribes of the Umatilla Indian Reservation, the Yakama Nation, and the Confederated Tribes of the Warm Springs Reservation in addition to the three listed in the PA. This is because these tribes have tribal lands within the APE as currently defined in the PA. Although this subject was briefly addressed during the meeting in Richland on December 13, 2006, we do not feel the agencies fully understand the difference between a THPO and a tribe under 36 CFR 800.

3 Eleventh “whereas”. Why are these two executive orders referenced to the exclusion of treaties, other executive orders, laws, regulations, and agency policies? The section needs to be modified to be more inclusive of the reasons that tribes are consulted.

3 “Now therefore,...” A sentence needs to be added to the end of this section that states what will result if the agencies fail to follow the provisions of the PA. This sentence should essentially read “Failure to follow the provisions and stipulations of this PA will result in the federal agencies following the regulations at 36 CFR 800 for each aspect of the undertaking.”

3 Stipulation I.B. “Address Section 106 NHPA compliance only.” This sentence is problematic in terms of the internal consistency of the PA. Other areas reference the agencies’ compliance with other sections of the NHPA. If the PA is intended to fulfill the agencies’ compliance with Section 106 then that is all the PA should address. If the agencies want to address other sections of the NHPA then all applicable sections should be addressed, not just a select few.

4 Stipulation I.C.2. Historic Properties Management Plan should be changed to Cultural Resources Management Plan. Addressing all properties and not just eligible properties will enable land managers conducting undertakings in the APE to have a better understanding of each project’s resources and will in the long run save time and money.

4 Stipulation I.C.4. Please specifically define what a “case-by-case basis” is.

4 Stipulation I.D. This section should note that exempt practices will only be exempt as long as the other signatory parties concur.

5 Stipulation II.A.3. This section needs to be rewritten/clarified. Identification of historic properties includes evaluation. Identification and evaluation are not two separate things. Some level of identification will be necessary throughout the entire APE. This may include a variety of methodologies to identify historic properties. Also, due to the ongoing and dynamic nature of the undertaking, it is likely that some cultural resources that are defined as ineligible may in fact be determined eligible at a later date. This is especially true when attempting to evaluate sites that are partially inundated.

The eleventh “whereas” potentially contradicts the notion that properties found to be ineligible for the National Register will receive no further consideration under terms of the PA.

5 Stipulation II.A.5. Please be more specific regarding what is or is not “cost effective.” Otherwise this could be part of the PA that is heavily debated after it is executed. It would help if a sentence were added to the end of this part that states that the agencies recognize that they still need to resolve adverse effects if they cannot be avoided.

5 Stipulation II.A.7. Please insert consulting after “other” in the first sentence.

5 Stipulation II.B. Please better define the applicability of professional qualification

standards. If the PA only applies to Section 106 of the NHPA, then please delete the reference to Section 112. Instead please use the reference to Section 112 at 36 CFR 800.2(a)(1).

- 5-6 Stipulation II.C. At the meeting in Richland on December 13, 2006, Lynn MacDonald indicated that this section was meant to be characterized as a mitigation alternative. If the PA only applies to Section 106 of the NHPA, then please delete the reference to sections 1 and 2. This section should be incorporated into a new stipulation regarding possible mitigation alternatives. The new section should pointedly mention that mitigation should be related to the criteria under which a site is eligible for inclusion in the National Register.
- 6 Stipulation II.C.2. Please define “tribal communities” and “scientific communities”. Aren’t “scientific communities” part of the “general public”? We are not aware of any difference between the two identified in the regulations.
- 6 Stipulation II.C.6. “Expansion of opportunities for heritage tourism” is something the agencies should be accomplishing as part of each agency’s recreation department and not as part of their management of cultural resources.
- 6 Stipulation II.C. Last paragraph. Section 304 of the NHPA is incorporated by reference at 36 CFR 800.6(a)(5). This reference should be used rather than a direct reference to Section 304. The word “allows” in the first sentence should be changed to “requires”. The reference to restriction of information should be more ingrained in the sections dealing with public involvement.
- 6 Stipulation II.D. We understand the reference to the 30 day request for comment period. However, this section needs to also reference the ability of the tribes to request government-to-government consultation. The section should also be rephrased to recognize that several portions of the Section 106 process require consultation between the agency and the SHPO/THPO or other consulting parties.
- 6 Stipulation II.E. BPA has currently committed funding to support activities that will be undertaken pursuant to this PA until 2012. An additional commitment of funding should be incorporated by reference into this section of the PA.
- 6 Stipulation II.F. Please insert “and signatory parties” after “Lead Federal Agencies”.
- 7 Stipulation III.A. First sentence. Please delete the word “either” and replace it with “that are potentially”.
- 7 Stipulation III.B. First sentence, third line. Please delete the word “adverse”. Application of the criteria of adverse effects (36 CFR 800.5(a)) occurs after the APE has been established (36 CFR 800.4(a)(1)) and after the identification of historic properties (36 CFR 800.4(b)). Determining adverse effects prior to determining the APE is not consistent with the regulations.

- 7 Stipulation III.D. First sentence. The word “coordination” should be changed to “consultation”. Also please insert “SHPO/THPO, affected tribes, and” in front of “appropriate consulting parties”.
- 7 Stipulation IV.A. Last sentence of the first paragraph. Please delete “The Lead Federal Agencies will set priorities” and replace with “Priorities will be”.
- 7-8 Stipulation IV.A. Our THPO has numerous questions and concerns regarding the priority list and would appreciate discussing them in person. Some of the main ones include:
- Fifth bulleted item. Please replace “endangers” with “affects”.
- Seventh bulleted item. This priority should be irrelevant with respect to whether or not an agency is required to resolve adverse effects.
- Eighth bulleted item. Are historical and cultural significance different than National Register eligibility? If so, how are they defined and who defines what is historically and/or culturally significant?
- Ninth bulleted item. Integrity is linked to the type of historic property under consideration and by what criterion (or criteria) the property is eligible for the National Register.
- Tenth bulleted item. This is solely linked to criterion D and should be broadened to reflect all four criteria.
- Thirteenth bulleted item. Agencies are required to comply with law whether or not they have funds available. Please delete this item.
- 8 Stipulation IV.B. Last line. Please delete “interested parties” and replace with “SHPOs/THPOs, affected tribes, and other appropriate consulting parties”.
- 8 Stipulation IV.B.1.c. Please reference 36 CFR 800.6(a)(5) in this section.
- 8 Stipulation IV.B.2.b. Who defines what is “of particular...cultural importance”? Historical importance should also be a consideration.
- 9 Stipulation IV.C. Second sentence. Please delete the word “values”. Delete reference to Section 304 and instead reference 36 CFR 800.6(a)(5).
- 10 Stipulation V.C.2. HPMP’s will still need the concurrence of the applicable PA signatories to be an actual compliance document.
- 10 Stipulation V.D.1. The agencies should review the PA or HPMP (CRMP) in consultation with the applicable signatory/consulting parties.

- 10 Stipulation V.D.2. Why did the agencies choose seven years for executing new PAs and HPMPs (CRMPs)?
- 11 Stipulation V.E. The word “interest” should be changed. The tribes are involved in this process for reasons in addition to interest.
- 11 Stipulation V.E.1. Please rephrase the first sentence. The SHPOs/THPOs and tribes are not simply “interested” parties. What is the difference between an affected tribe and an interested tribe? What is the difference between an affected agency and a cooperating agency? The regulations (36 CFR 800.14(a)(2)) require more than review and comment by SHPOs/THPOs and Indian tribes in developing programmatic agreements. In addition, BPA committed in their ROD to developing programmatic agreements in full cooperation with tribes.
- 12 Stipulation V.F.5. Please delete the word “scientific” and replace with “archaeological”. What is the difference between using historical and/or oral historical research as a method to identify historic properties in comparison to as a resource-specific treatment?
- 12 Stipulation V.F.9. Please delete the words “completion of”.
- 12-13 Stipulation VI. We expect this stipulation to be rewritten following the discussions in Richland on December 13, 2006. Our THPO would be happy to provide suggestions.
- 13 Stipulation VII.A. Second sentence. The sentence gives the impression that members of the cooperating groups are members of the public with respect to the PA. This is not the case. Who are the “potentially interested members of the public”? Reference should be made to 36 CFR 800.6(a)(5).
- 14 Stipulation VII.C. Earlier comments made by the Nez Perce Tribe noted that the Tribe had not been able to review the handbook referenced here. The agencies responded that the Tribe had been able to review the handbook which is untrue. Before tacitly agreeing with the handbook by referencing it in the PA, it will be necessary for the Tribe to review its contents.
- 14 Stipulation VIII.A. We agree that the agencies should meet on occasion to maintain consistency and address issues in the overall FCRPS cultural program. However, this group should not be formalized to the exclusion of the tribes.
- 15 Stipulation VIII.B.2. Please insert a sentence to note that the cooperating groups are not a substitute for consultation between the agencies, SHPOs/THPOs, and tribes under Section 106.
- 15 Stipulation VIII.C. Please add the words “consistent with funding” to the end of the first sentence.
- 16 Stipulation VIII.E. A sentence should be added to the end of this sentence referencing the sensitivity of information discussed during these annual meeting and whether or not it is

appropriate under 36 CFR 800.6(a)(5).

- 16 Stipulation X.A. Please insert “and the signatory parties” after “Agencies” in the first sentence.
- 16 Stipulation X.A.1. Please insert “and other signatory parties” after Agencies in the first sentence.
- 16-17 Stipulation XI.A. Please insert “or ACHP” at the end of the first sentence. Please insert “or ACHP” after “Agencies” in the second sentence.
- 18 Stipulation XI.F. Please insert the word “of” after “more” in the first sentence.
- 20 Stipulation XV.E. The PA will only take effect on tribal lands when it has been signed by the agencies, ACHP, and the THPO. The first sentence needs to be rephrased.
- 20 Stipulation XV. Please add a section G that should state that “If the agencies can not meet the terms of the PA due to fiscal reasons, their compliance with Section 106 must be reconsidered through consultation.”

We appreciate the agency technical staff’s willingness to meet with the tribes technical staff to discuss the PA and we look forward to additional discussions in the future. Our main suggestion in this regard is that future discussions allow time to address the PA line by line rather than in generalities. We think this would be the quickest path to constructing an agreement that all parties will feel comfortable signing. If you have any questions or need additional information, please contact our Tribal Historic Preservation Officer, Mr. Kevin Cannell.

Sincerely,



for Rebecca A. Miles, Chairman

cc: Kimberly St. Hilaire, BPA Cultural Resource Manager  
Gail Celmer, Northwestern Division Archaeologist  
Lynn MacDonald, Bureau of Reclamation Archaeologist

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.

Kimberly St. Hilaire  
February 24, 2007  
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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