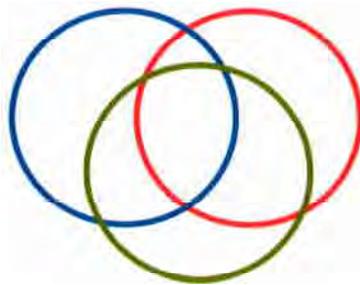


FCRPS

Federal Columbia River Power System

CULTURAL RESOURCE HANDBOOK



Shared Management for a Common Goal

**Bureau of
Reclamation**



**U.S. Army Corps
of Engineers**



**Bonneville Power
Administration**



SEPTEMBER 2005

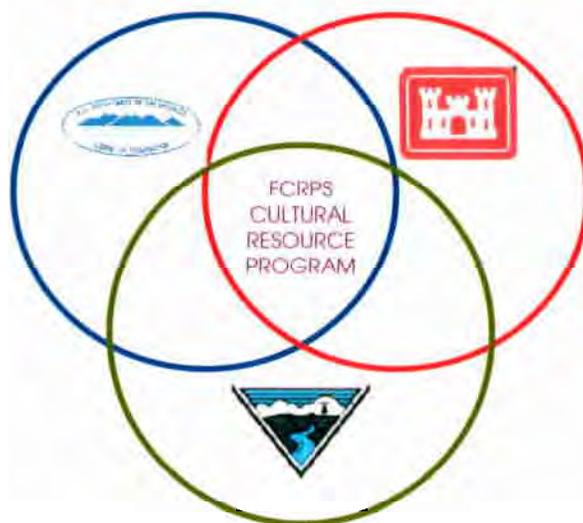
FOREWORD

The Bonneville Power Administration (BPA), U.S. Army Corps of Engineers (USACE), and Bureau of Reclamation (Reclamation) share management responsibilities for the multi-purpose operation of fourteen Projects within the Federal Columbia River Power System (FCRPS) project area and associated effects on historic properties.

Each agency has a comprehensive cultural resource program specific to its mission and must comply with its own regulations and policies. It must be stressed that the FCRPS Cultural Resource Management Program is only a part of those larger programs. **This handbook is only applicable to the shared responsibilities of the three agencies under Section 106 of the National Historic Preservation Act for this specific program.**

This handbook is a compilation of the understandings, agreements, and processes determined by the three federal agencies to jointly implement the FCRPS Cultural Resource Management Program (hereafter called the Program). The handbook:

- 1) Defines the scope and purpose of the Program;
- 2) Outlines how the agencies will work together to achieve the common goal of system-wide compliance with Section 106 of the National Historic Preservation Act;
- 3) Outlines the methods in which the three agencies, through the Cultural Resources Subcommittee (CRSC) and Cooperating Groups, interact to accomplish the FCRPS historic property management activities; and
- 4) Serves as a reference tool for pertinent program documents and will be updated regularly.



FCRPS Cultural Resource Handbook

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ACRONYMS

APE	Area of Potential Effect
BPA	Bonneville Power Administration
Co-op Groups	Cooperating Groups
COTR	Contracting Officer's Technical Representative
CRA	Continuing Resolution Authority
CRSC	Cultural Resources Subcommittee
DFA	Direct Funding Agreement
FCRPS	Federal Columbia River Power System
HPMP	Historic Property Management Plan
IDU	Intertie Development and Use
JOC	Joint Operating Committee
NHPA	National Historic Preservation Act
O&M	Operations and Maintenance
PA	Programmatic Agreement
PI	Performance Indicator
Program	FCRPS Cultural Resource Program and/or Historic Properties Management Program as defined in the National Historic Preservation Act
Projects	Twelve USACE and two Reclamation dams and associated lakes/reservoirs, fee, and easement lands
Reclamation	Bureau of Reclamation
ROD	Record of Decision
SHPO	State Historic Preservation Officer
SOR	System Operation Review
SOW	Statement of Work
THPO	Tribal Historic Preservation Officer
USACE	U.S. Army Corps of Engineers

INTRODUCTION

Setting

The USACE (Portland, Seattle, and Walla Walla Districts) operates and maintains 12 of the 14 Projects that comprise the FCRPS project area. These are: Libby, Albeni Falls, Chief Joseph, John Day, The Dalles, Bonneville, Dworshak, Lower Granite, Lower Monumental, Little Goose, McNary, and Ice Harbor Dams and their lakes or reservoirs. Reclamation operates Grand Coulee and Hungry Horse Dams. See **Appendix A** for a map of the project area.

Each of the 14 Projects was individually authorized, except for the four Lower Snake River Projects that were authorized as a group (Lower Granite, Lower Monumental, Little Goose, and Ice Harbor). The Congressional authorizations dated from 1933 to 1950 and the construction period stretched from 1933 to 1972. Different projects had different authorizations for multiple uses including power generation, irrigation, flood control, navigation, recreation, and fish and wildlife enhancement. BPA markets and distributes the power generated from these 14 federal Projects.

USACE real estate policies changed over this time period, resulting in different types of real estate interest being obtained for lands impacted by the various Projects. Some Projects have only flowage easements; others have a combination of fee title and easement lands.

Besides the differences in authorizations and real estate interests, the differences in legal status as land owners/managers and in appropriations processes affect the agencies' collaboration on historic properties compliance matters.

Reclamation and USACE are land-owning and managing agencies responsible under the Archeological Resource Protection Act (ARPA, 16 USC 470aa ff), Native American Grave Protection and Repatriation Act (NAGPRA, 25 USC 3001 ff), and under the National Historic Preservation Act (NHPA 16 USC 470s). BPA's role under the Bonneville Project Act of 1937 (16 USC 832 ff) is to transmit and sell the electrical energy generated by Reclamation and USACE. From the proceeds collected from ratepayers, BPA also must fund certain Reclamation and USACE hydropower activities. BPA does not manage lands at any of the 14 projects. However, project operations, including power production, have an effect on historic properties and under Section 106 of NHPA, the three agencies share compliance responsibilities.

The appropriations processes for each of the three partnering agencies are also different. All are funded under the annual Energy and Water Development Appropriation Acts. BPA, because it has its own operating fund, simply receives annual approval of its budget from the Congressional appropriations

committees. The passage of a single Continuing Resolution Authority (CRA) is sufficient to accomplish this.

The COE and BOR each receive actual annual appropriations. The FCRPS dams are funded individually and both agencies need transfer authority to collect and pool appropriations for a consolidated regional cultural resources program. Programming of funds for a given fiscal year must await completion of the appropriations process. This means that in some years appropriations will be available on October 1 of the new fiscal year. In other years, funding will be available only by CRA until dates as late as January or February of the new fiscal year.

History of the Cultural Resource Program

Between 1933 and 1975, the USACE and Reclamation constructed five storage and nine run-of-river dams and power plants on the Columbia and its tributaries. In the 1970s and 1980s, several of the reservoir pools were raised or the power plants expanded to increase power generation capacity. In the 1980s and 1990s, analysis of impacts of operations showed that the rise and fall of reservoir pools was damaging historic properties.

Archeological investigations of varying levels of completeness were conducted as part of these undertakings. Until passage of the National Historic Preservation Act (NHPA) in 1966 and the Archeological and Historic Preservation Act (Moss-Bennett) in 1974, the investigations were typically very limited. Those early investigations were conducted either by the Smithsonian Institution, by educational institutions permitted by the Smithsonian, or by the National Park Service.

When NHPA and Moss-Bennett became law, Federal agencies began to develop internal historic property management programs and to implement large-scale investigations associated with new construction actions. At FCRPS reservoirs, this resulted in extensive investigations at both Lake Roosevelt and Lake Rufus Woods associated with Third Power Plant construction at Grand Coulee Dam. Agencies also sought to complete systematic investigations to inventory and evaluate historic properties at projects already in operation. However, operation and maintenance funds for historic property management activities on already operating reservoirs were extremely scarce and those investigations progressed at a glacial pace.

Then, in the late 1980s, BPA completed an environmental analysis of the effects of proposed changes in power generation and marketing strategies. During this period, BPA constructed a transmission line between Oregon and California to transmit surplus power. The Environmental Impact Statement developed for this project identified the need for a Programmatic Agreement (PA) to cover

impacts to historic properties from reservoir hydropower operations at the five FCRPS storage reservoirs. This agreement, commonly referred to as the IDU PA (Intertie Development and Use Programmatic Agreement) was signed in 1991. In compliance with the terms of the IDU PA, beginning in 1994, BPA provided funding for archeological investigations at the storage reservoirs in the FCRPS system (Dworshak, Libby, Albeni Falls, Hungry Horse, and Grand Coulee) (see **Appendix B**). IDU-funded investigations focused on archeological survey of drawdown zones and evaluative testing of archeological sites. Compliance work proceeded through 1997 with BPA funding

In 1995, the three agencies completed a comprehensive technical and environmental impact analysis of the FCRPS. This study, commonly called the System Operation Review (SOR), analyzed the impacts of all authorized operations, rather than just the power operations as assessed in the IDU study. The purpose of this study was to develop and implement a coordinated system operating strategy for managing the multiple uses of the Columbia River system into the 21st century. The SOR study concluded that historic properties were being affected by system operations, but the scope of impact could not be accurately assessed. In the Records of Decision (RODs) for the SOR Environmental Impact Statement (1997), the agencies committed to address the effects of multi-purpose operations on historic properties at 14 FCRPS reservoirs (see **Appendix C** for the three agency RODs). In order to do this, sufficient funding would be required by the three agencies. A team of agency archeologists subsequently developed a funding estimate that provided low, medium, and high estimates for identification and treatment of historic properties over an initial 15-year period. The medium level of funding (\$4.5M annually) was selected by the agencies with the understanding that program needs would be reassessed at the end of this period. BPA committed to fund this effort over the long term with USACE and Reclamation each providing a share of the funds. The funding agreements are described below.

In 2001, the USACE, BPA, and Reclamation recognized they needed to resolve issues that were impeding efficient program implementation. In January 2001, the three agencies began a Cultural Resource Management Program self-assessment to identify issues impacting the program and the means to resolve those issues. One outcome was a decision that a handbook was needed to document mutually agreed-upon program parameters, to define goals and objectives, and set forth internal communication and business processes. Another outcome was the formation of a single Cultural Resources Subgroup, which was later formalized as the Cultural Resources Subcommittee (CRSC) of the Joint Operating Committees (JOC).

A detailed archaeological history and administrative history, as well as a timeline of historic events affecting the FCRPS, are provided in **Appendix D**.

Financial Commitment and Direct Funding Agreements

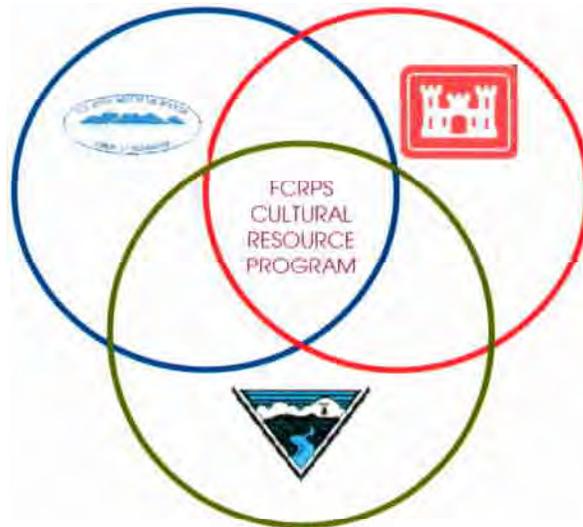
In 1996, BPA and Reclamation entered into a direct funding agreement (DFA) to fund power operations and maintenance (O&M) costs at Reclamation's power plants. This agreement provided a vehicle for BPA to directly fund their share of Reclamation's O&M costs. Prior to this agreement, BPA made payments to the U.S. Treasury and then Reclamation was reimbursed through the appropriations process. The DFA also established a Joint Operating Committee (JOC) to review annual and five-year power budgets. The JOC has the authority to establish subgroups or subcommittees as required to complete technical work assignments. In 1997, BPA and USACE signed a similar DFA, which established a counterpart JOC with similar authorities. See **Appendix E** for agency DFAs.

The JOCs were then given authority to approve and administer the budget for the FCRPS Cultural Resource Management program. Most subgroups or subcommittees established by the two JOCs initially acted independently of each other. Since signing the DFAs, the agencies have gradually worked more closely in the areas of reporting, updating, and presenting at bi-annual joint BPA, USACE, and Reclamation JOC meetings. In this light, BPA, Reclamation, and USACE found it more efficient to merge into one subcommittee to address FCRPS cultural resource management issues from a system-wide perspective. The Cultural Resources Subcommittee (CRSC) was formed as a result of merging groups established under the two DFAs and was formalized in 2004. The purpose, roles, and responsibilities of the CRSC are discussed further in subsequent sections.

In 1997, as a result of the SOR, the agencies agreed to fund a \$4.5 million annual Program for an initial 15-year period. The funding was apportioned at \$3 million total for the 12 USACE Projects and \$1,428,000 total for the two Reclamation Projects. BPA provides power revenues to the Program to cover the joint costs of power generation. USACE and Reclamation provide Congressionally appropriated funding to cover the joint non-power portion of the operating costs at each project. Funding mechanisms were established to allow this direct transfer of funds beginning in fiscal year 1998 for Reclamation and 1999 for USACE. In 2005, the agencies reassessed the 15-year time frame and concluded that additional time may be necessary to execute the total \$67.5 million Program. Compliance and funding requirements will continue to be monitored to efficiently plan for future Program needs. Continuation of the current joint funding plan is contingent upon the availability of adequate appropriations and adequate appropriations transfer authority.

PURPOSE AND SCOPE OF THE FCRPS CULTURAL RESOURCE MANAGEMENT PROGRAM

Federal Agencies' Roles and Responsibilities



As seen in the tri-circle diagram above, each agency has its own cultural resource program based on its individualized mission. The common element represented in the center of the tri-circle diagram depicts the shared Program management responsibilities of the three agencies. Despite differing missions, the three agencies share the responsibility for implementing the FCRPS Cultural Resource Management Program. The unique mission of each agency and responsibility for compliance under Section 106 of National Historic Preservation Act is outlined in **Appendix F**, the FCRPS System-wide Programmatic Agreement.

The Federal agencies are responsible for implementing the FCRPS Cultural Resource Management Program in a manner that is consistent with and ultimately achieves compliance with legal requirements. **Appendix G** lists the laws that define agency responsibilities and the authority for implementing the Program. The managing agency at each of the 14 Projects has final decision-making authority for activities that fulfill the above requirements.

To implement and manage this large Program, it is incumbent upon the agencies to complete long-term planning, prioritize activities, approve budgets, prepare scopes of work, award and administer contracts, and measure and report Program accomplishments. **Appendix H** provides a diagram showing interagency relationships. **Appendix I** provides two memoranda of agreement, one between BPA and Reclamation and one between BPA and USACE that define how the agencies coordinate to execute the Program.

Reclamation and USACE have the responsibility for managing the Projects' physical assets, including lands; BPA has the responsibility for distributing and

marketing hydroelectric power generated from each project. Although BPA is not a land manager, the three agencies have corresponding compliance responsibilities under Section 106 of the National Historic Preservation Act.

Definition of Undertaking and Area of Potential Effect

As specified in the Advisory Council on Historic Places regulations for Protection of Historic Properties (36 CFR 800), federal agencies shall determine if their actions constitute an undertaking and shall define the area of potential effect (APE) for that undertaking. An undertaking is defined as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency. The APE is the geographic area within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties.

Congress authorized construction of the 14 federal projects to achieve multiple purposes, including hydropower generation, navigation, flood control, irrigation water supply, municipal and industrial water supply, recreation, fish and wildlife and other natural resources management. Not all projects were authorized for all purposes. Operation of the 14 FCRPS projects for those authorized purposes and implementation of land-based minor construction, maintenance, or other ground disturbing activities to support those authorized purposes collectively comprise the *undertaking*, as defined in 36 CFR 800.16. This undertaking has the potential to cause effects on historic properties.

The *Area of Potential Effect (APE)* includes those lands either directly or indirectly affected by operations for all project purposes of the twelve Corps and two Reclamation Projects. This includes lands identified as being affected at the date of signature of the System-wide Programmatic Agreement, lands where adverse effects are identified in the future, and lands where Project operational effects are reasonably foreseeable. Within Project boundaries, 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 from Project purpose operations. The APE also includes lands in downstream reaches outside of the Project boundaries where there is no current federal ownership or legal interest, but where adverse effects occurring to historic properties are the result of the federal undertaking. The APE for each Project will be more specifically defined in Project-specific agreements.

System-wide Goals and Objectives

The goals of the agencies participating in the FCRPS Cultural Resource Management Program are as follows:

- *Agency Compliance with Section 106*—Continue investigations to identify, evaluate and treat historic properties within the APE.
- *Long Term Historic Property Management Planning*—Prepare and update Historic Property Management Plans, three-agency Handbook, system-wide research design and treatment plans.
- *Public Benefit*—Foster research, disseminate information, and implement programs to protect sites.

The Program goals and objectives are defined in detail in **Appendix F**, FCRPS System-wide Programmatic Agreement.

PROGRAM ORGANIZATION AND MANAGEMENT

Planning Levels

FCRPS planning occurs on two levels: (1) *System-wide* planning and oversight and (2) *Project* planning and implementation. The first planning level is accomplished by the CRSC, the second level by the agency management and technical staff within the Cooperating Groups.

The planning process is an interactive loop between those responsible for FCRPS Program management and those responsible for individual Project planning and implementation. At the system level, the CRSC uses this interactive loop to define long-term FCRPS goals and objectives to achieve compliance with Federal law.

All planning and plans are subject to agency and District reviews for consistency and legal compliance with other agency and District missions, plans, objectives, and legal requirements. FCRPS operations are only part of each agency's and District's missions and operational requirements.

Cultural Resources Subcommittee

As discussed previously, the JOC has the authority to establish subgroups or subcommittees as required to complete technical work assignments. The "Cultural Properties Subgroup" was established by a 1997 Letter of Agreement between BPA and Reclamation. A similar Letter of Agreement was signed by BPA and USACE in 1998 (**Appendix J**). The Cultural Properties Subgroup was later re-named Cultural Resources Subcommittee (CRSC) for consistency with other designated subcommittees under the JOC.

The CRSC consists of three Co-Chairs, Archaeologists, Project Managers, and Attorneys from the three agencies. CRSC provides a forum for the BPA, Reclamation, and USACE technical personnel to identify, discuss, and resolve

Cultural Resource Program implementation issues at a *system-wide level*. JOC has tasked the CRSC Co-Chairs with budgetary oversight and specific reporting requirements. The main functions of the CRSC are to define Program goals and objectives, achieve compliance with legal requirements, address unresolved project level program issues, establish standards for work performance, allocate JOC-approved annual funding at the project level, manage annual budgets, develop performance indicators and tracking systems, and monitor and report on annual accomplishments. This group's charter was formulated and approved by the three-agency JOC in 2004. The charter, **Appendix K**, defines the purpose and structure of the CRSC and describes the roles of the Co-Chairs and members.

Cooperating Groups

As an outcome of SOR, the agencies established seven Cooperating (Co-op) groups. In a 1997 Northwestern Division Memorandum, Portland, Seattle, and Walla Walla Districts were directed to establish Co-op groups. Typically, Co-op group participants are BPA and USACE or Reclamation project managers and technical staff, tribal representatives and/or employees, State Historic Preservation Officers, Tribal Historic Preservation Officers, and affected agencies. A list of participants in the seven Co-op Groups is provided as **Appendix L**.

The Co-op Groups are a focal point for the agencies' planning, coordination, and documentation for the FCRPS Cultural Resource Management Program at the *Project level*. These groups provide a forum in which participants provide recommendations to the agencies for the identification, prioritization, and review of Section 106 work activities within the Program. The recommendations provided by the Co-op Group participants are considered in the federal agencies' decision-making process. **Appendix M** provides 1998 Corps Policy Guidance that describes the role and function of the Co-op groups. Agency Co-op Group members are responsible for communicating technical issues to the CRSC that cannot be resolved at the Project level.

The Co-op Group assists the agencies in defining long-term and short-term priorities and implementation processes, developing historic properties management plans, five year action plans and annual work plans that present a Project-specific process to achieve the agencies' compliance goals and objectives. These plans are discussed in detail below.

Co-op Groups are not official advisory groups under the Federal Advisory Committee Act but fall under exceptions provided in the Unfunded Mandates Reform Act, 1995. These exceptions allow governmental employees only (state, tribal, federal, county) to meet and advise federal agencies when they have the authority to act on their government's behalf. The Co-op groups are advisory only and governmental responsibilities cannot be delegated to these groups. They do not serve as a forum for formal Government-to-Government

consultation with tribes. Discussions and decisions made within the Co-op groups do not replace formal Section 106 consultation with SHPOs, THPOs, Tribes, or the Advisory Council on Historic Preservation.

System-wide Program Documents

FCRPS Cultural Resource Program Handbook

This document is the three-agency CRSC handbook and reference manual, developed by the CRSC of the JOC.

FCRPS System-wide Programmatic Agreement (DRAFT)

To comply with Section 106 of NHPA, the agencies prepared a System-wide Programmatic Agreement (PA) that defines cultural resource management actions for FCRPS Projects. Signatories to this PA are the responsible agencies, the Advisory Council on Historic Preservation, and interested parties, including but not limited to tribes, states, and land management agencies. A copy of this draft agreement is in **Appendix F**.

System-wide Research Design

A system-wide research design is an aid for developing research objectives in the Project specific Historic Property Management Plans. This research design is currently being developed. It is expected to:

- Identify research domains or historic themes that may be applicable across the Columbia Basin or might pertain to subset areas within the basin;
- Define temporal range, geographic scope, and property types for each theme;
- Synthesize theoretical models presented in the past;
- Identify data gaps and research opportunities; and
- Identify public outreach and education opportunities.

The research design will be prepared with input from Co-op Groups and professional researchers and will build upon existing context statements and planning documents. At a minimum it will address archeological, historic and ethnographic research domains.

Project-Specific Documents

Historic Properties Management Plans

Each Project will have a current Historic Property Management Plan (HPMP). An HPMP is a long-term planning tool to meet FCRPS program goals at the Project level. It provides a framework for planning and prioritizing resource identification and management actions. It also provides a context for preparation of the five-year action plans and annual work plans, and will be used to measure accomplishment of the FCRPS Program goals and objectives. An HPMP will be a living document that can be updated, as needed, to reflect new information and evolving conditions.

At a minimum, an HPMP or its supporting materials will contain the items listed in Attachment 2 of the System-wide Programmatic Agreement located in **Appendix F**.

Five-Year Action Plans

The Co-op Groups consult on and recommend a five-year action plan for each Project to identify and prioritize actions to be accomplished during that period. Activities in the plan must reflect the priorities identified in the Project HPMP and must contribute toward completion of priority basin-wide Program goals and objectives. The five-year action plan will be updated annually to reflect recent accomplishments, new information, and changes in priorities.

A five-year action plan or its supporting materials will minimally consist of the following:

- A list and prioritization of program activities for each of the five years. Level of effort shall be estimated for each activity.
- A list of any proposed actions that would require agencies to request funding in excess of FCRPS program allotment.
- A list of any multi-year activities with estimated annual cost, and start/finish dates.
- A context statement demonstrating how annual activities help achieve FCRPS Program goals and objectives.

An example of a Five-Year Action Plan is included in **Appendix N**.

Annual Work Plans

The Co-op Groups consult on and recommend annual work plans for each Project to identify and prioritize actions for the next fiscal year. The annual plan will be consistent with objectives and priorities mapped out in the five-year action plan. For their respective agencies, the CRSC Co-Chairs will use the

annual work plans to recommend how the annual power budget is distributed among the 14 FCRPS Projects.

The annual work plan and its supporting materials will minimally consist of the following:

- A description of each proposed activity, estimated level of effort, how it will be accomplished (contract, in-house, etc.) and fiscal year work is to be started and completed;
- For multiple year activities, a list detailing the year activity was started, estimated completion date, estimated annual cost for out years, and total costs to date; and,
- A statement explaining how activities help achieve Project five-year action plan and articulate with FCRPS program goals and objectives.

It is recognized that not all needs can be anticipated at the time these annual plans are formulated. Annual work plans should be sufficiently flexible to allow for reallocation should unforeseen events arise. The appropriate CRSC Co-Chairs will be involved in the reallocation and reprogramming process.

If a major project is identified by any Co-op Group that meets the goals and objectives, but would absorb a disproportionate percentage of the annual budget, the Program may seek an alternative source of funding. An example of a project that might meet this criterion would be bank stabilization.

An example of an Annual Work Plan is included in **Appendix O**.

PROGRAM ACTIVITIES AND PROCESSES

Interagency Communication

The three federal agencies work closely to ensure a successful FCRPS Cultural Resource Management Program. Therefore, it is incumbent upon the agencies to communicate prior to and during Program-related actions.

If information relating to historic properties affected by multipurpose operation of the FCRPS is received by one agency, the information should be shared immediately with the other affected agencies. Information received by Reclamation should be conveyed to the BPA Spokane Office Project Manager and the BPA Cultural Resources Program Manager. Information received by the USACE Portland, Seattle and Walla Walla Districts shall be provided to the USACE FCRPS Cultural Resources Program Manager who will then notify the BPA Cultural Resources Program Manager and the appropriate BPA Project Manager. BPA

should report information received to the appropriate USACE and/or Reclamation representatives.

Meetings

JOC Meetings

The three agency Co-Chairs will attend JOC and other subcommittee meetings as required by their respective agency. If attendance is not possible, a written summary of current activities and issues in the cultural resources program shall be provided to the agency JOC representatives prior to scheduled meetings. It is important for the Co-Chairs to keep their JOC representatives apprised of funds performance and compliance progress as well as provide advice to the JOC regarding the interface of the Cultural Resource Program with overall FCRPS programs and policies. Co-Chairs shall convey all pertinent information from these JOC meetings to the CRSC and Co-op groups.

At appropriate intervals, the CRSC may be asked to provide the JOC with a tutorial on the FCRPS Cultural Resource Management Program to refresh long-term JOC members and educate new members.

Cultural Resources Subcommittee Meetings

The CRSC meets no less than four times a year and will plan to meet during the months of November, February, May, and August, if possible. The function, makeup, and meetings of the CRSC are defined in the Charter provided in **Appendix K**. All CRSC meetings will include discussions of performance indicator execution, discussions of system-wide cultural resource issues and specific issues that have developed within the seven Co-op groups. CRSC meetings will often serve as working meetings to develop various Section 106 Program documents and reports.

The November or fall meeting should be scheduled to review budget allocations for the current fiscal year, previous year funds execution, and overall plans for the current fiscal year.

The February meeting should precede the three-agency JOC spring meeting to prepare a report of the year's activities. This meeting should serve to finalize details of the FCRPS Annual Conference including the agenda and to define specific assignments for the agency representatives.

The May meeting should focus on planning for the next fiscal year Annual FCRPS conference.

The August meeting should focus on fiscal year-end funds performance and to develop performance indicators for next fiscal year.

Relevant information from CRSC meetings will be shared with the affected Co-op Groups at their regularly scheduled meetings, or sooner, if a particular topic warrants immediate notification.

Cooperating Group Meetings

The organization of the seven Co-op Groups and conduct of their meetings is flexible in nature due to the wide geographic area involved and the numerous participants. **Appendix P** provides an example of operating guidelines and includes how a Co-op Group conducts its meetings. Other Co-op Groups may use part of or the entire example as a process guideline.

Project managers will provide monthly budget status updates at each Co-op Group meeting.

Contractors performing cultural resource work at FCRPS Projects will provide monthly reports to the agency Contracting Officer's Technical Representative (COTR). The COTR will distribute releasable portions of the information to the appropriate partnering Federal agency and to the Co-op Group.

Information discussed at Co-op Group meetings will be accurately transcribed and preserved. Substantive issues that affect other Co-op Groups should be transmitted to the CRSC either immediately, if time sensitive, or presented at the next CRSC meeting.

FCRPS Cultural Resource Program Annual Conference

The agencies will hold a conference for all Program participants during March, annually. The purpose of this conference is to update participants on compliance progress from a system-wide perspective; to discuss Program successes and issues; and to share technical information. BPA CRSC members will normally take the lead in conference planning with assistance by other agency CRSC members. The format and length of the conference will be flexible and based on the current needs of the Program participants. Needs and preferences will be assessed by the agencies through participant survey after each conference.

Annual Budgets and Allocation of Funding

The Program has a finite pool of funds of approximately \$4.5 million annually. The intent is to complete as many of the tasks—consistent with project HPMPs and five-year action plans—as possible every year within the established fiscal constraints. The Program should obligate and expend annual allocated funds within the same year in order to meet overall FCRPS execution goals.

A list of tasks that qualify for funding under the FCRPS Cultural Resource Management Program is included in **Appendix Q-1**. The list applies only to

activities on lands within the APE. **Appendix Q-2** indicates activities that do not qualify for program funding.

Each agency JOC has ultimate approval authority over the annual FCRPS budget. The CRSC Co-Chairs distribute annual allocations at the Project level after approval by the JOC. Project funding needs in the form of an annual work plan will be reviewed by the appropriate CRSC Co-Chairs at a specified time each fiscal year. Schedules differ between USACE and Reclamation because of different appropriations processes. For the USACE, Project funding requests (annual work plans) are to be submitted to the USACE CRSC Co-Chair by April 1st annually. The USACE CRSC Co-Chair will then meet with the BPA CRSC Co-Chair to review and recommend a final budget to the JOC by mid-April annually. The USACE/BPA JOC normally review and finalize the FCRPS program budgets before September 30th for the next fiscal year. The USACE Co-Chair will notify each Co-op Group on or before September 30th of their approved allocated amount for the new fiscal year so that annual work plans can be finalized and contracting actions can be initiated. Co-op groups should consider the recommendations made by the CRSC Co-Chairs on individual line items in the annual work plans, as recommendations are offered to meet system compliance goals. Although the total funding for the Corps Program remains constant, distribution among the 12 Projects varies annually based on specific needs and capability.

For Reclamation, annual work plans for the following fiscal year will be submitted annually to Reclamation's CRSC Co-Chair and BPA CRSC Co-Chair by mid-June for review. By mid-July, the two Co-Chairs will respond to Project staff with approval or alternative recommendations. Statements of Work (SOWs) for contracts are developed from the annual work plans and will be finalized by mid-August.

The following prioritized criteria are utilized by the CRSC Co-Chairs during the annual funding review process for each FCRPS Project:

- 1) Priority of a given historic properties activity in relation to the Project HPMP and five-year action plan;
- 2) Past technical performance, including meeting contract requirements; and,
- 3) Past performance on annual funding, including obligation and expenditure records and undelivered orders from previous years.

For the Corps program, if funds are not contractually obligated for an approved Project activity by May 31st annually and it becomes clear that those funds will not be obligated and expended within the fiscal year, then the Co-Chairs will reassess use of the funds and reassign them according to one of the two options below:

- 1) Transfer funds to another Project, but only when that Project has plans or contracts in place to obligate and expend funds immediately. This action shall be discussed within the affected Co-op Groups, and approved by the Corps and BPA Co-Chairs prior to transfer.
- 2) Return funds to the JOC for reallocation. JOC may elect to release the appropriated share to the affected District for use in their general cultural resources program or may reallocate joint funds to another FCRPS program.

If a Project has unobligated funds at the end of the fiscal year, those funds will automatically be revoked.

Project Managers and agency technical staff of all three agencies are responsible for management of their budgets. They shall: obligate and expend allocated funds within the year provided; closely track and manage allocated funds; track unfinished work from previous fiscal years; notify and involve appropriate CRSC Co-Chairs of reallocation of funds within the annual work plan due to unforeseen events; and provide monthly financial updates to their respective CRSC Co-Chairs. Monthly budget reporting format is included in **Appendix R**.

Contract Acquisition and Management

Implementation of the FCRPS Cultural Resource Management Program occurs in an environment of fluctuating and unpredictable reservoir levels, limited work windows, and unanticipated discoveries. Therefore, the acquisition process must be flexible, responsive, and cooperative. This flexibility is pivotal to the success of the agencies' shared compliance responsibilities. Early in the program, it was determined by the agencies that BPA would award and administer contracts on Reclamation projects, and USACE would administer acquisitions within their project lands.

The agencies shall utilize the most expeditious and cost effective procedures to accomplish annual work plans at each of the Projects. Qualified in-house agency staff may complete small activities, but the most common instrument in this Program is the contract. Agency contract specialists and Co-op Groups will discuss requirements and contract instruments when appropriate. In all cases, the Federal Acquisition Regulations must be followed for USACE awarded contracts. Contracts administered by BPA will comply with Bonneville Purchase Instructions. All contract work under this Program shall be performed or overseen by individuals who meet 36 CFR, Part 68, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

Program Tracking and Accomplishments

The CRSC is responsible for monitoring progress toward accomplishing long-term FCRPS program goals and providing a series of reports on that progress. As described previously, the CRSC Co-Chairs shall provide updates on the cultural resources program at each JOC meeting. An annual report shall be prepared by the CRSC, which includes project baseline data and progress toward compliance goals. The current format for gathering project baseline data is provided in **Appendix S** and will be updated regularly. This annual report shall be presented at the annual FCRPS Cultural Resources Conference and copies will be provided to the JOCs. The annual report will also serve as a reporting tool under the System-wide Programmatic Agreement.

As mentioned in a previous section, FCRPS cultural resource contractors will provide monthly reports to the appropriate agency Contracting Officer's Technical Representative (COTR). The COTR will distribute the information to the appropriate partnering Federal agency and to the appropriate Co-op Groups. The COTR will use the reports to track contract requirements, assist in out-year planning, and serve as a tracking mechanism for Program performance indicators. Performance indicators are discussed below.

Performance Indicators

The CRSC is responsible for developing annual performance indicators (PIs) for the Program. PIs for the next fiscal year are normally developed in the fourth quarter of the current fiscal year. These PIs will be developed in coordination with the JOC Performance Subcommittee and progress reported to the JOC on a quarterly basis. The annual PIs will be discussed and coordinated with the Co-op groups so that goals are met system-wide.

Records Management and Data Archiving

Records management for the FCRPS program is complex, as implementation actions are occurring over many years and from many places. As a result, no complete record exists of official correspondence, contract files, FCRPS products, or other important records. The actions taken to satisfy records management requirements are detailed in **Appendix T**.

Program Schedule

Experience has shown that activity management at the reservoirs is complex, requiring frequent and sometimes rapid adjustments of planned actions to address changes in anticipated water elevations, unexpected resource or burial exposure or damage, and other conditions. A program schedule is provided in **Appendix U** and outlines anticipated steps necessary to stay abreast of

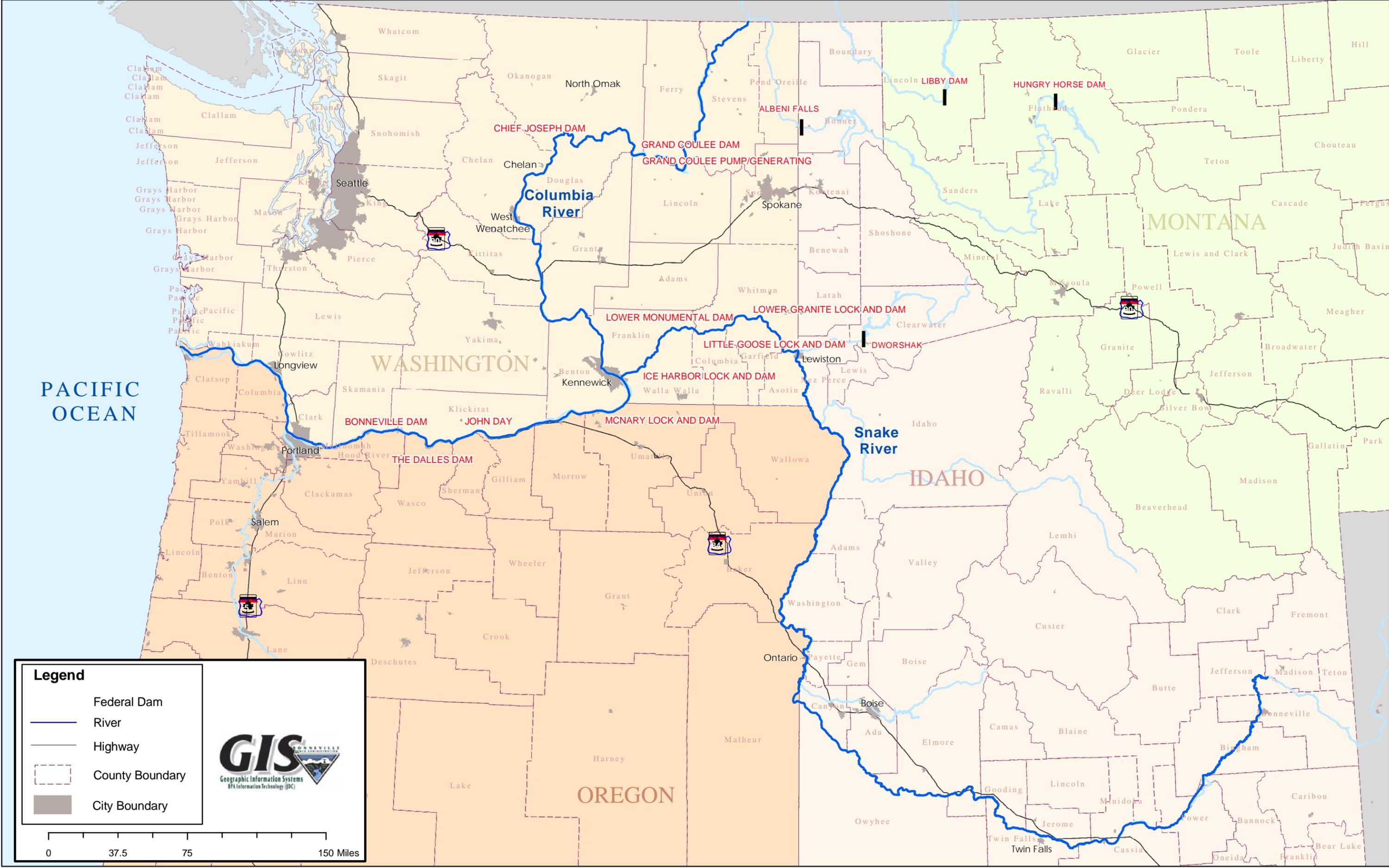
conditions throughout a given year and accommodate associated changes in upcoming years. The table also includes the various budget request and reporting cycles, as well as progress and accomplishment reporting times.

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Appendix A	Map of FCRPS Project Area
Appendix B	Intertie Development and Use Programmatic Agreement (IDU PA)
Appendix C	System Operation Review Records of Decision
Appendix D	History of Federal Cultural Resource Management in the Pacific Northwest
Appendix E	O&M Direct Funding Agreement: BPA/Reclamation O&M Direct Funding Agreement: BPA/USACE
Appendix F	FCRPS System-wide Programmatic Agreement (DRAFT)
Appendix G	Instruments that Define the FCRPS Cultural Resource Program
Appendix H	FCRPS CR Program Interagency Relationship Diagram
Appendix I	MOA Reclamation/BPA for Mutually Agreed Upon Historic Properties Investigations at Lake Roosevelt and Hungry Horse Reservoir (2003); MOA USACE/BPA to Cooperate in Historic Properties Management (DRAFT)
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Appendix K	Cultural Resources Subcommittee Charter
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Appendix Q-1	Activities Included in FCRPS Program
Appendix Q-2	Activities Not Included in FCRPS Program
Appendix R	Examples of Monthly Budget Reporting Format
Appendix S	Baseline Data Reporting Format
Appendix T	Records Management Requirements
Appendix U	FCRPS Cultural Resources Program Schedule

Appendix A

Map of FCRPS Project Area



PACIFIC OCEAN

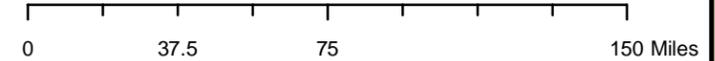
WASHINGTON

IDAHO

MONTANA

OREGON

- Legend**
-  Federal Dam
 -  River
 -  Highway
 -  County Boundary
 -  City Boundary



Appendix B

Intertie Development and Use Programmatic Agreement
(IDUPA) 1991

PROGRAMMATIC AGREEMENT FOR COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT

Among

- *Bonneville Power Administration*
- *Bureau of Reclamation, Pacific Northwest Region*
- *U.S. Army Corps of Engineers, North Pacific Division*
 - *National Park Service, Pacific Northwest Region*
 - *U.S. Forest Service, Region I*
- *Confederated Tribes of the Colville Reservation*
 - *Spokane Tribe of Indians*
- *Idaho, Montana, and Washington State Historic Preservation Officers*
 - *Advisory Council on Historic Preservation*

Regarding

FEDERAL COLUMBIA RIVER POWER SYSTEM HYDROELECTRIC OPERATIONS

WHEREAS, hydroelectric project operations of the Federal Columbia River Power System, including power marketing policies and programs under the direct and/or indirect jurisdiction of the Bonneville Power Administration (BPA), the Bureau of Reclamation (Bureau), and the U.S. Army Corps of Engineers (Corps), may have an effect upon properties included in, eligible for inclusion in, or potentially eligible for inclusion in the National Register of Historic Places (Register); and

WHEREAS, BPA has requested the comments of the Advisory Council on Historic Preservation (Council) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470 f) and its implementing regulations, "Protection of Historic Properties: (36 CFR Part 800); and

WHEREAS, the historic properties potentially affected are within or immediately adjacent to the reservoir drawdown zones (hereinafter affected area) in the project areas of Grand Coulee (Lake Roosevelt) and Hungry Horse Dams, owned and operated by the Bureau, and the Dworshak, Libby (Lake Kootenai), and Albeni Falls (Lake Pend Oreille) Dams, owned and operated by the Corps; and

WHEREAS, the National Historic Preservation Act requires Federal agencies having direct or indirect jurisdiction over an undertaking to take into account the effect of the undertaking on historic properties; and

WHEREAS, BPA power marketing policy and program undertakings, as power system management actions, are under the direct and/or indirect jurisdiction of BPA, the Bureau, and the Corps; and

WHEREAS, the BPA, the Bureau, and the Corps, in exercising their independent power system management authorities and in fulfilling their responsibilities for historic properties, intend to meet this shared responsibility for historic properties in a timely manner; and

WHEREAS, the operation of the Grand Coulee Project affects land within the boundaries of the Colville Indian Reservation and the Spokane Indian Reservation, and lands administered by the National Park Service (NPS); and

WHEREAS, the Bureau, the NPS, the Confederated Tribes of the Colville Reservation (Colville Tribes), the Spokane Tribe of Indians (Spokane Tribe), and other parties have ratified the Lake Roosevelt Cooperative Management Agreement; and

WHEREAS, Dworshak Reservoir, Hungry Horse Reservoir, Lake Kootenai, and Lake Pend Oreille are partially within National Forests administered by the U.S. Forest Service, Region 1;

NOW THEREFORE, it is mutually agreed that BPA, the NPS, the Bureau, and the Corps will identify and manage historic properties in accordance with the following stipulations:

STIPULATIONS

BPA, the Bureau, the NPS, and the Corps will ensure that the following measures are carried out:

1. Survey and Evaluation

BPA will participate with the Bureau, the NPS, the Corps, the Colville Tribes, and the Spokane Tribe, as appropriate in accordance with their respective

jurisdictions, to complete intensive surveys¹ of historic properties and properties possessing traditional cultural value to Native Americans, at the project reservoirs listed above. (Exhibit A shows the present status of historic preservation activities.) The Bureau, the NPS, the Corps, the Colville Tribe, and the Spokane Tribe will ensure that surveys are performed in accordance with accepted archaeological practices as defined in 36 CFR Part 800, Section 110 Guidelines, and the Secretary of the Interior's Standards and Guidelines. Site evaluations will be done in accordance with 36 CFR Part 63 and the above-referenced guidelines. Surveys and evaluations will be done in consultation with the appropriate SHPO and appropriate Native American tribes in accordance with 36 CFR Part 63.

Intensive surveys will be initiated at all affected areas within two years from execution of this Agreement, and proceed as quickly as possible thereafter. The Bureau, the NPS, the Corps, the Colville Tribes, and the Spokane Tribe, as appropriate, shall provide copies of completed survey reports to BPA, interested Native American tribes, the U.S. Forest Service, and the appropriate SHPO.

2. Action Plans

Once intensive surveys are completed for each affected area, the Bureau, the NPS, the Corps, the Colville Tribes, or the Spokane Tribe, as appropriate, will consult with BPA and the appropriate SHPO to develop a draft Action Plan for that area.

Action Plans will identify:

- Research design (including criteria for determining which properties may be likely to yield information important in prehistory and history);
- Determinations of Register eligibility; and
- Methods of mitigating adverse effects on Register and Register-eligible properties (including *in situ* preservation and law enforcement), monitoring, and curation.

Appropriate Native American tribes and traditional spiritual leaders will be consulted about properties possessing traditional cultural value to Native Americans, and provided a reasonable opportunity to comment on each draft

¹ Intensive survey describes the distribution of properties in an area; determines the number, location, and condition of the properties; determines the types of properties actually present within the area; permits classification of individual properties; and records the physical extent of the specific properties. 48 Fed. Reg. 44716, 44722 (1983).

Action Plan, and the Forest Service will be afforded a reasonable opportunity to comment on the draft Action Plans for Dworshak Reservoir, Hungry Horse Reservoir, Lake Kootanusa, and Lake Pend Oreille. Upon completion of the coordinated draft Action Plan for each affected area (within 18 months of completion of the intensive survey for the subject project), the draft Action Plan will be submitted to the Council for review and comment.

Each final Action Plan will be implemented when mutually accepted by the managing agency or tribe, the appropriate SHPO, the Forest Service if the affected area is on Forest Service lands, and the Council. In consultation with other involved jurisdictions and affected Tribes, the lead agency for each Action Plan will prepare an annual report of activities performed during the year. The lead agency will provide copies to BPA, the Council, the appropriate SHPOs, other interested agencies, and appropriate Native American Tribes.

3. **Interim Management**

Interim management of historic properties at these project reservoirs will be conducted in accordance with the steps in the Council's regulations, 36 CFR Part 800. Until such time as the approved Action Plan is implemented, and prior to any change in operating constraints, the appropriate agency or tribe will implement the steps detailed in the regulations for identification, evaluation, and management of historic properties.

4. **Professional Qualifications**

Supervisory personnel managing the implementation of each Action Plan shall, at a minimum, meet the professional qualifications detailed in the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation," 48 Fed.Reg. 44716, 44738 (1983).

5. **Other Historic Properties Management Considerations**

a. If human skeletal material is discovered during the intensive survey or during implementation of the Action Plan, the Bureau, the NPS, the Corps, the Colville Tribes, or the Spokane Tribe, as appropriate, will consult with local law enforcement authorities and the appropriate SHPO; or, if the skeletal material appears to be of Native American origin, will consult with the affected tribe and appropriate SHPO to prepare and implement a burial disposition plan in accordance with the North American Graves Protection and Repatriation Act

(P.L. 101-601), BPA will participate in implementing the approved/agreed upon burial disposition plan.

b. The Bureau, the NPS, the Corps, the Colville Tribes, and the Spokane Tribe shall curate archaeological data, artifacts, field notes, photographs, and other records in accordance with the standards, guidelines, and principles in 36 CFR 79, "Curation of Federally-Owned or Administered Archeological Collections: Final Rule" (55 Fed. Reg. 37839); the Council's "Treatment of Archaeological Properties: A Handbook;" and in "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines," 48 Fed. Reg. 44716 (1983).

c. The Bureau, the NPS, the Corps, the Colville Tribes, or the Spokane Tribe shall prepare and distribute final reports to interested parties for each project listed above, for the affected area within their respective jurisdiction, within two years after full implementation of the Action Plan. Final reports will include the results of survey, evaluation, and mitigation.

6. Existing or new Memorandum of Agreement (MOA), or an existing Programmatic Agreement for the operation and management of individual project reservoirs included in this Agreement, may be substituted for this Agreement. In the absence of a substitute MOA or Programmatic Agreement, the terms of this Agreement shall be implemented for each project reservoir.

7. Any party to this Agreement may request its amendment, whereupon the parties will consult in accordance with 36 CFR 800.13 to consider such amendment.

8. If a signatory to this Agreement determines that the terms of the Agreement cannot be met, or that a change is necessary to meet the requirements of the law, that signatory will immediately request the consulting parties to consider an amendment or addendum. Any necessary amendment or addendum will be executed as defined in 36 CFR Part 800. If a dispute arises regarding implementation of the Agreement, BPA will consult with the objecting party(ies) to resolve the dispute. If the dispute cannot be resolved, further comments will be requested from the Advisory Council, as defined in 36 CFR Part 800.

9. Any party to this Agreement may suspend it by providing 30 days written notice to the other consulting parties. Additional consultations will then occur in an effort to resolve any issues, and to reimplement the Agreement in amended form.

10. Execution and implementation of this Programmatic Agreement evidences that BPA, the Corps, Bureau and the NPS have satisfied their Section 106 responsibilities for hydroelectric project operations (including BPA power marketing policies and programs) affecting the reservoir drawdown areas of Grand Coulee, Hungry Horse, Dworshak, Libby, and Albeni Falls Dams.

11. All activities set forth in this Agreement are subject to availability of funds. If lack of funds results in failure to carry out the terms of this Agreement, BPA, NPS, the Bureau, and the Corps will again request the Council's comments in accordance with 36 CFR Part 800.

EXHIBIT A

STATUS OF HISTORIC PRESERVATION ACTIVITIES BY PROJECT

Project	Survey	Action Plan/ Mitigation Plan	Mitigation
Dworshak ¹	Required	Required	Required
Albeni Falls ²	Partially Completed ³	Required	Required
Libby	Mostly Completed ⁴	Completed ⁵	Required
Grand Coulee	Partially Completed	Required	Required
Hungry Horse	Partially Completed	Required	Required

NOTES:

- 1/ The Dworshak project is presently covered under a Programmatic Agreement that addresses historic preservation activities on all operating reservoir projects within the U.S. Army Corps of Engineers Walla Walla District.
 - 2/ The majority of lands are privately owned. Historic property investigations will require acquisition of real estate interests for site access and excavation, which will increase overall costs.
 - 3/ Site locations have been identified, but no subsurface testing or evaluation has occurred.
 - 4/ The U.S. Forest Service has identified additional cultural resource sites within the affected area. These sites have not been subjected to subsurface testing or evaluation.
 - 5/ An existing Action Plan/Mitigation Plan may need to be modified as a result of subsurface testing and evaluation of recently discovered sites (see preceding footnote).
-

PROGRAMMATIC AGREEMENT
Federal Columbia River Hydroelectric Operations — 7

BONNEVILLE POWER ADMINISTRATION

By: [Signature]
James J. Jura, Administrator

Date: AUG 2, 1991

BUREAU OF RECLAMATION, PACIFIC NORTHWEST REGION

By: [Signature]
John W. Keys, III, Regional Director

Date: AUG. 6, 1991

U.S. ARMY CORPS OF ENGINEERS, NORTH PACIFIC DIVISION

By: [Signature]
MG Ernest J. Harrell, Division Engineer

Date: 26 AUG 1991

NATIONAL PARK SERVICE, PACIFIC NORTHWEST REGION

By: [Signature]
Charles H. Odegaard, Regional Director

Date: 8/27/91

U.S. FOREST SERVICE, REGION 1

By: [Signature]
John W. Mumma, Regional Forester

Date: 9/9/91

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

By: [Signature]
Jude C. Stensgar, Business Council Chairperson

Date: SEP 25, 1991

SPOKANE TRIBE OF INDIANS

By: [Signature]
Bruce Wynne, Business Council Chairperson

Date: 9/25/91

IDAHO STATE HISTORIC PRESERVATION OFFICE

By: [Signature]
David Crowder, Ph.D., State Historic Preservation Officer

Date: 9/30/91

MONTANA STATE HISTORIC PRESERVATION OFFICE

By: [Signature]
Marcella Sherfy, State Historic Preservation Officer

Date: 10-8-91

WASHINGTON STATE HISTORIC PRESERVATION OFFICE

By: [Signature]
Jacob E. Thomas, State Historic Preservation Officer

Date: 10/27/91

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: [Signature]
John F.W. Rogers, Chairman

Date: 11/27/91

Concur:

KOOTENAI TRIBE OF IDAHO

By: [Signature]
Velma Bahe, Kootenai Tribal Council Chairperson

Date: July 31, 1991

Appendix C

System Operations Review
Records of Decision

BUREAU OF RECLAMATION

RECORD OF DECISION

COLUMBIA RIVER SYSTEM OPERATION REVIEW
SELECTION OF A SYSTEM OPERATION STRATEGY

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IV. PUBLIC INVOLVEMENT. 5

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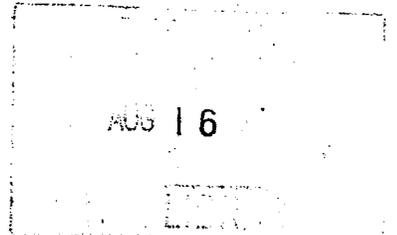
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EXHIBIT A: How the Strategies Would Affect River Uses



BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION

U.S. DEPARTMENT OF THE INTERIOR

COLUMBIA RIVER SYSTEM OPERATION REVIEW
SELECTION OF A SYSTEM OPERATION STRATEGY

I. INTRODUCTION

This record documents the decision of the Bureau of Reclamation (Reclamation) to implement existing and modified plans related to reservoir regulation and project operation for Hungry Horse and Grand Coulee projects. Reclamation selects the System Operation Strategy (SOS) Preferred Alternative (PA) as described in the Columbia River System Operation Review (SOR) Final Environmental Impact Statement, November 1995.

II. DECISION STATEMENT

This records adopts, incorporates and reaffirms the "Record of Decision (ROD) Implementing Actions Pursuant to Biological Opinions of March 1995" signed by the Pacific Northwest Regional Director on March 10, 1995 which is designated herein as the PA and is the best overall operating strategy for the Columbia River system. The previous ROD documents Reclamation's decision to implement measures in the Biological Opinion on "Reinitiation of Consultation 1994-1998 Operation of the Federal Columbia River Power System and Juvenile Fish Transportation Program in 1995 and Future Years" issued by the National Marine fisheries Service (NMFS) on March 2, 1995 on Snake River spring, summer and fall chinook and Snake River sockeye salmon; and the United States Fish and Wildlife Service (USFWS) Biological Opinion on four Snake River snails and the Kootenai River white sturgeon dated March 1, 1995. Moreover, Reclamation has been operating its projects in accordance with that ROD and those Biological Opinions, and as required, will continue to coordinate the projects in the future with NMFS and USFWS to meet the adaptive management approach to Federal Columbia River Power System

(FCRPS) reservoir operations that is contemplated within the operational flexibility of the PA.

Selection of the PA is determined to be the best operating strategy since it has been approved by NMFS and USFWS as meeting the biological needs of the endangered species, has proven to be a workable strategy given Reclamation's experience past short term operation, and after analysis, proven to best meet the other multiple use requirements of the system.

III. BACKGROUND

A. Purpose and Need

Reclamation, the Corps, and the U.S. Department of Energy's Bonneville Power Administration (BPA) are responsible for management of the Federal Columbia River Power System. Multiple uses of the system, including but not limited to flood control, power, navigation, irrigation, and municipal and industrial uses as well as natural resource management have evolved largely from dam development. Today, these river uses are increasingly competing for limited water resources in the Columbia River Basin. Often, they conflict with each other. To date, meeting these demands has been guided somewhat independently by those sharing responsibility for management of the system. The Federal agencies responsible for river management decided to use the pending expiration of several long-term agreements involving power production as an opportunity to review future operations of the Columbia River system and river use issues. Because of renewal of the agreements and after years of trying to accommodate growing multiple-use demands on the system, the three agencies decided that it was time for a "top-to-bottom" review in order to assure the best possible operation and management of the system within the constraints of the systems' required multiple uses and the biological needs of the endangered species. The result of that decision was the System Operation Review. The review is the environmental analysis required by the National Environmental Policy Act (NEPA) to consider changes in Columbia River system operations and the effect of those changes on users of the system and the environment.

The SOR began in 1990 with a focus on all river and reservoir uses for the FCRPS. The Endangered Species Act (ESA) began to

influence the formulation of alternatives in November 1991 when the first of three Snake River salmon species was listed as threatened or endangered. The SOR then began to focus on the role system operations could play in salmon recovery while meeting other project purposes.

There were four actions intended from the SOR: (1) develop and implement a coordinated system operating strategy for managing the multiple uses of the FCRPS while meeting the biological needs of the ESA; (2) provide interested parties a long-term role in system planning and operation through a Columbia River Regional Forum; (3) renegotiate and renew the Pacific Northwest Coordination Agreement (PNCA); and (4) renew current agreements or develop new Canadian Entitlement Allocation Agreements (CEAA).

This ROD applies solely to the first of these actions: selection of a system operation strategy. Separate RODs are being prepared for the PNCA and CEAA. No action is likely for the Regional Forum because that need is being met through other regional activities such as the Technical Management Team, the ESA Implementation Team and the Northwest Power Planning Council's Fish and Wildlife Program amendment process.

The SOR EIS assessed operations at the 14 Federal dams in the Columbia River basin in the United States. Reclamation operates two of those -- Grand Coulee and Hungry Horse dams. These projects play a prominent role in the coordinated operation of the Columbia River system because of their size and location. Their 8 million acre-feet of storage is about half of the federally-controlled storage in the FCRPS. They are keystones in the system operation for hydropower, flood control, and irrigation.

B. Scope and Process

The first step of the review was to establish the scope of the study. After public meetings in 14 cities in the region during August 1990 and consultation with numerous local, state, and Federal agencies, the three lead agencies were better able to define the geographic scope of the study and the process.

Scope: The specific scope of the SOR encompasses 14 Federal dams on the Columbia and lower Snake Rivers that have major influenced

on multiple-purpose system operation and for which power production is coordinated under the PNCA. These include five storage dams: Hungry Horse and Grand Coulee (Reclamation) and Libby, Albeni Falls, and Dworshak (Corps); and nine downstream run-of-river projects: Chief Joseph, Lower Granite, Little Goose, Lower Monumental, Ice Harbor, McNary, John Day, The Dalles, and Bonneville (all Corps). The SOR Scoping Document presented the scope of the study and analytical methods was issued in may 1991.

Process: Pilot studies of four river uses were conducted simultaneously with development of the Scoping Document. From July 1991 to August 1992, work groups representing 10 key river uses developed and screened 90 initial system operating alternatives. Ten candidate strategies were then formulated for public review. Following public comment in September 1992, seven strategies were developed for full scale analysis in the EIS which took place from September 1992 to January 1994. A Draft EIS was issued in July 1994 and following public comment, the Final EIS was issued in January 1996.

Ten interagency work groups were assigned one river use or resource: flood control, navigation, anadromous fish, resident fish, wildlife, power, recreation, irrigation, water quality, and cultural resources. These work groups provided a forum for experts and other interested parties to work together on analysis for a specific river use. Key objectives were to share ideas and information, provide the best available science and reach consensus.

Overseeing the work groups was the Analysis Management Group, an interagency coordination group consisting of project managers, the 10 resource work group leaders and other representatives from the lead agencies. Other groups that reported to the Analysis Management Group were the Economic Analysis Group; the River Operation Simulation Experts; PNCA Alternatives Analysis Group; NEPA Action Group; Public Involvement Group; Forum Alternatives Work Group; and contractors.

After analyzing information from scoping, the SOR followed a three-phase decision process for developing a system operation strategy: 1) pilot or test analysis; 2) public participation in the work groups and the beginning of the screening phase; and 3) full scale analysis of the candidate strategies. Further

information about this process is in Section V. Alternatives Considered.

IV. PUBLIC INVOLVEMENT

The three SOR agencies held numerous public meetings across the Pacific Northwest at different points in the review to involve the public and listen to their views:

- In 1990, about 800 people attended 14 scoping meetings to explain the SOR and gather comments on the scope of the study. These meetings were held in Seattle, Spokane, Kennewick and Grand Coulee, Washington; Sandpoint, Boise, Idaho Falls, and Orofino, Idaho; Libby, Eureka, Missoula, and Kalispell, Montana; and Pendleton and Portland, Oregon.
- From November 1991 through January 1992, roundtable meetings were held to provide the public an opportunity to preview and comment on the preliminary alternatives developed by the SOR work groups. These meetings were held in Sandpoint and Orofino, Idaho; Kalispell and Libby Montana; and Kennewick, Grand Coulee and Seattle, Washington. About 300 people attended these meetings.
- In September 1992, about 500 people attended 14 mid-point meetings to learn about and comment on the strategies being considered. In the fall of 1994, over 500 people turned out to comment on the Draft EIS at nine public meetings around the region. The locations were nearly the same as for the scoping meetings.
- In September and October, 1994, a series of nine public hearings was held on the Draft EIS. Approximately 500 people attended these hearings in Boise, Lewiston, and Sandpoint, Idaho; Kalispell and Libby, Montana; Grand Coulee, Pasco, and Seattle, Washington; and Portland, Oregon. In all, the agencies received written or verbal comment from over 360 people during the public review process of the Draft EIS. All comments received full consideration.

Members of the public served on SOR work groups and helped prepare technical appendices. Others followed work group

activities by mail, without direct involvement. There were hundreds of people who participate on an ad hoc basis through letters, telephone and meeting attendance.

The Final EIS consists of the Main Report (450 pages), the Summary and 20 technical appendices that analyze river use areas: River Operation Simulation; Air Quality; Anadromous Fish and Juvenile Fish Transportation; Cultural Resources; Flood Control; Irrigation/Municipal and Industrial Water Supply; Land Use and Development; Navigation; Power; Recreation; Resident Fish; Soils, Geology, and Groundwater; Water Quality; Wildlife; Economic and Social Impacts; CEAA; Columbia River Regional Forum; PNCA, USFWS Coordination Act Report; and Comments and Responses. The SOR team also compiled a variety of publications to educate the public about the Columbia River and its system operations. A newsletter was mailed to over 5,000 homes and businesses regularly during the six-year life of the SOR to inform people about new developments in the study and to present river management information.

V. ALTERNATIVES CONSIDERED

More than 90 approaches to river system operations were initially considered. Many were proposed by citizens and organizations, others were suggested by SOR work groups and the project managers. Computer models simulated implementation of all 90 alternatives so that the environmental and social effects and impacts on power generation, natural and cultural resources, and all other river activities could be assessed and compared.

As a result of screening by SOR work groups and public review of the results, many of the initial alternatives were redesigned, combined or deemed unworkable because these alternatives did not meet the system's multiple use requirements while accommodating the biological needs of the endangered species. Seven System Operation Strategies (SOS) were then chosen and analyzed in detail. Various options within these seven strategies were considered, so that a total of 21 alternatives were examined for the Draft EIS.

The Draft EIS alternatives were further modified following comments from Tribes, State and Federal agencies, industry, environmental organizations, and individuals. Six of the 21

alternatives in the Draft EIS were carried into the analysis for the Final EIS without modification (SOSs 1a, 2c, 5b, 6b, and 6d). Four alternatives in the Draft EIS were modified following public comment and again considered in the Final EIS (SOSs 4c, 9a, 9b, and 9c). Three new alternatives were identified and evaluated in the Final EIS in response to public comment (SOSs 5c and PA) or as a result of recommendations from the 1994-98 Biological Opinion issued by NMFS (SOS 2d). Several Draft EIS alternatives were eliminated as unreasonable based upon additional analysis results and consideration of public comment (SOSs 2a, 2b, 3a, 3b, 4a, 4b, 5a, 6a, and 6c). The Final EIS Main Report describes the evolution of the alternatives on pages 4-4 and 4-5.

The following System Operating Strategies received detailed consideration in the Final EIS since Reclamation determined that these strategies were the best suited to meeting the multiple use needs of the system and the requirements of the endangered species. See attached Exhibit A for a comparison of the following strategies and associated river uses. The numbering is not consecutive due to adjustments made in the list of alternatives considered between the Draft and Final EISs.

SOS 1a - Pre-Salmon Summit Operation: This strategy simulates the way the system was operated from 1983 through the 1990-91, prior to the listing of salmon species under the ESA. Elements of an alternative recommended by the Columbia River Alliance, Recover 1, were included.

SOS 1b - Optimum Load-Following Operation: This option maximizes system benefits for the traditional uses of the system, power generation, flood control, and navigation. It simulates the way the system was operated prior to the Northwest Power Planning and Conservation Act of 1980.

SOS 2c - Current Operation/No Action: This alternative calls for operations consistent with the Corps of Engineers' 1993 Supplemental EIS. It is similar to how the system was operated in 1992-93, after three salmon species were listed under the ESA.

SOS 2d - 1994-98 Biological Opinion: This alternative represents the operation that would have occurred had the recommendations resulting from the ESA consultation completed in 1994 been

implemented. It is closest to the way the system was being run just after the analysis in the Draft EIS was completed.

SOS 4c - Stable Storage Project Operation with Modified Grand Coulee Flood Control: This alternative specifies monthly elevation targets to be used year-round to improve conditions at the major Federal storage projects for recreation and resident fish and wildlife. In response to public comments, this alternative includes minimum elevation levels, known as Integrated Rule Curves (IRCs) for Libby and Hungry Horse Reservoirs.

SOS 5b - Natural River Operation: This alternative specifies that the four lower Snake River projects would be drawn down to near riverbed levels for four and one-half months during the spring/summer salmon migration period. Construction of new low-level outlets would be required to allow water to bypass the dam, powerhouse, and spillway.

SOS 5c - Permanent Natural River Operation: This alternative specifies that the four lower Snake River projects would be drawn down to near riverbed levels year-round.

SOS 6b - Fixed Drawdown Operation: This alternative specifies that the four lower Snake River projects would be drawn down to near spillway crest for four and one-half months during the spring/summer salmon migration period.

SOS 6d - Lower Granite Drawdown: This strategy would draw down Lower Granite to near spillway crest for four and one-half months.

SOS 9a - Detailed Fishery Operating Plan (DFOP): This operation was recommended by the region's fish agencies and tribes. It establishes flow targets at Lower Granite and The Dalles, draws down the lower Snake River projects to near spillway crest for four and one-half months, specifies spill levels at run-of-river projects, and eliminates fish transportation.

SOS 9b - Adaptive Management: This modification of DFOP establishes flow targets at McNary and Lower Granite, specifies maximum water releases from upstream projects, draws down lower Snake River projects to minimum operating pool, draws down John

Day to minimum irrigation pool, and specifies spill levels at run-of-river projects.

SOS 9c - Balanced Impacts Operation: This strategy was originally recommended by the State of Idaho, which subsequently withdrew its support. It draws down the four lower Snake River projects to near spillway crest for about two months during the spring salmon migration period. It also includes flow augmentation at 1994-98 Biological Opinion levels, IRCs at Libby and Hungry Horse, and a higher winter operating elevation at Albeni Falls.

SOS Preferred Alternative: This strategy adopts operations recommended in the NMFS and USFWS Biological Opinions issued in March of 1995. Its intent is to support the recovery of ESA-listed fish by storing water in reservoirs during the fall and winter to meet spring and summer flow targets. Maximum summer draft limits at Libby, Hungry Horse, and Dworshak are used to minimize detrimental effects on other natural resources, provide flood protection, and produce a reasonable amount of power generation.

One additional alternative was considered that was identified late in the analysis process for the Final EIS. While the agencies could not incorporate the results of this additional analysis in the comparative analysis in the Final EIS, the effects of the alternative were described in Chapter 4 of the Final EIS Main Report. This alternative was suggested by the Confederated Tribes of the Umatilla Indian Reservation. It was similar to SOS 9a above with higher flow targets during the spring and summer, drawdown to natural river levels, higher spill levels, and reduced flood control storage space during the winter to allow for higher spring and summer flows. This alternative was designated as SOS 9d.

Exhibit A, "How the Strategies Would Affect River Uses:" summarizes the environmental effects for the alternatives by category. In addition to the effects on each major river use, the overall economic impact is shown as well.

VI. ESA SECTION 7 CONSULTATION

Because of the listed species within the Columbia River system, fourteen system operation strategies from the SOR Draft EIS were

provided to NMFS and USFWS in the 1995 supplemental Biological Assessment as part of the reinitiation of consultation on the 1994-1998 proposed operations. As a result of this consultation, NMFS and USFWS issued separate Biological Opinions which addressed the effects of the FCRPS operation upon listed species within their jurisdictions.

The USFWS adopted the non-jeopardy Biological Opinion dated July 27, 1994 on the bald eagle, Lake Roosevelt (Grand Coulee project) population, and concurred that the action is not likely to adversely affect the endangered gray wolf, threatened grizzly bear, and endangered peregrine falcon. The USFWS also issued a non-jeopardy Biological Opinion for Snake River snails.

In their March 2, 1995 Biological Opinion, NMFS recommended a Reasonable and Prudent Alternative (RPA) and concluded that the RPA does not jeopardize the continued existence of the spring/summer and fall Chinook, and does not reduce appreciably the likelihood of survival and recovery of the Snake River sockeye salmon.

Reclamation continues to coordinate with NMFS and USFWS on operations. Under adaptive management, operations are adjusted in-season as well as year-to-year as scientific information is further collected and evaluated.

The following ESA-established regional forums facilitate making operational recommendations:

- The Technical Management Team (TMT) makes recommendations to Reclamation and the Corps on weekly management of river operations related to flows, spill, and transport.
- The Implementation Team (IT) coordinates activities of federal, state, and tribal sovereigns for implementation of regional plans to restore anadromous fish and addresses weekly issues raised by the TMT.
- The Executive Committee oversees implementation activities and if the IT cannot resolve an issue, makes final recommendation to Reclamation and the Corps on operation changes.

All forums consist of representation from Federal, state, tribal, and regional agencies. Additionally, all forums are public and provide opportunity for non-members to participate.

In July, 1996, NMFS proposed several Snake River and Columbia River basin steelhead stocks for listing as threatened and endangered. Reclamation will coordinate with NMFS on the proposed listings and may modify the selected SOS after evaluating effects on these proposed stocks and considering recommendations of the TMT.

VII. SYSTEM OPERATION STRATEGY (SOS) AND SELECTION OF THE PREFERRED ALTERNATIVE (PA)

The SOS PA in the SOR Final Environment Impact Statement (FEIS) represents the operation recommended by NMFS and USFWS in their Biological Opinions issued on March 2, 1995 and March 1, 1995, respectively. SOS PA was selected as the best alternative because it supports recovery of ESA-listed species as outlined in these Biological Opinions, specifically the Reasonable and Prudent Alternative and the Incidental Take Statement, by limiting water releases during the fall and winter in an attempt to provide water supplies for spring and summer fish target flows.

Since environmental protection for anadromous fish and other listed species became the focus of this analysis, the selected strategy is an environmentally preferable alternative. It favors ESA-listed species as a matter of compliance with law and policy. It is focused on the protection of anadromous fish at the expense of other species, primarily resident fish and wildlife. It is possible to design additional environmentally preferable alternatives by choosing different combinations of operating measures that reflect other tradeoffs among river uses and resources. For example, second environmentally preferable alternative could be designed which would contain elements from several SOSs considered in the Final EIS.

The system will be operated to achieve flood control elevations by April 15 each year and to meet demands for irrigation supplies, power production and recreation. Storage water from Grand Coulee and Hungry Horse will also be used for flow

augmentation for fish recovery. Moreover, the selected PA adopts the adaptive management approach of the RPAs. Under this approach, operations may be modified in-season for actual hydrologic and fish migration conditions and year-to-year based upon new scientific information or to support studies for long-term system configuration changes as provided within the PA's flexibility.

The TMT will make in-season recommendations to Reclamation based on runoff conditions, fish migration and other factors. Reclamation will continue to participate in various regional forums, such as the IT and Executive Committee, where system operations are proposed and discussed. Reclamation will also continue to coordinate with NMFS, USFWS, the Corps, BPA, the Northwest Power Planning Council (NPPC), states, and Tribes on newly proposed reservoir operations. In coordination with these groups, Reclamation may need to change operations for flood control, emergencies, approved research, or other project uses which is provided within the PA's flexibility. Reclamation will rely upon existing authority and information in the SOR FEIS to evaluate and implement such new operations, and to adjust the SOS in coordination with NMFS and USFWS and others.

In summary, under the selected system operation, Reclamation will operate Hungry Horse and Grand Coulee projects in the FCRPS to:

- continue to provide irrigation water supplies to meet contractual arrangements; provide fish and wildlife enhancement; provide recreation opportunities; provide hydro power production; and meet other authorized target objectives.
- provide additional flow augmentation in the Columbia and Snake Rivers and manage these flows during the fish migration season to optimize anadromous fish survival.
- manage reservoir elevations within Grand Coulee and Hungry Horse to maximum summer draft limits to the extent possible to minimize detrimental effects on resident fish, wildlife, cultural resources and recreational facilities.
- meet flood control requirements at Grand Coulee and Hungry Horse to reduce mainstem and tributary flood damage.

- manage system inflows and releases during the fall and winter so that reservoir elevations at Grand Coulee and Hungry Horse meet flood control levels in April as determined by that year's runoff probability.
- release stored water from Grand Coulee and Hungry Horse during the migration season in a manner that strives toward meeting specified flow targets measured at McNary Dam, recognizing that these targets are not achievable in many years.

Reclamation will coordinate with the other Federal, state, and tribal representatives in the TMT process and consider TMT recommendations in making final decisions on the operation of Reclamation projects. Operations may be modified on a case-by-case basis if recommended by the TMT.

VIII. MITIGATION FOR PREFERRED ALTERNATIVE

A major issue in selecting the PA was to provide for Snake River salmon recovery. Events such as ESA listings and corresponding Biological Opinions dramatically impacted FCRPS operations. Improving conditions for listed anadromous fish was a main (is the) objective of the selected SOS, however, in selection of the preferred alternative, Reclamation employed all practicable means to avoid environmental impacts from its implementation. However, under the preferred alternative, there will be some level of adverse environmental impact at Reclamation projects in the following areas:

Cultural Resources: Fluctuating water levels and associated shoreline erosion have the potential to adversely affect significant cultural resources at all Federal reservoirs in the FCRPS.

The National Historic Preservation Act (NHPA) requires Federal agencies to take into account adverse impacts and formulate plans to address them. The SOR agencies are currently finalizing a Programmatic Agreement with the Advisory Council on Historic Preservation (Council), the appropriate State Historic Preservation Officers, affected agencies, and affected Federally-recognized Tribes. The Programmatic Agreement will address the requirement of Section 106 of the NPA to consult with the Council

on the effects of the undertaking on historic properties. Government-to-government consultations with affected Tribes on the Programmatic Agreement and its implementation are ongoing.

Pursuant to the Programmatic Agreement, Reclamation will develop individual Historic Preservation Management Plans (HPMP) for each reservoir which will identify significant cultural resources, the approaches to resource protection, preservation and treatment, the framework for research designs for data recovery where data recovery is the preferred treatment, plans for site monitoring, plans for public education and interpretation of cultural materials, and plans for the long-term curation of recovered artifacts and information. The HPMP will also address issues required by other relevant legislation, including the Archeological Resources Protection Act and the Native American Graves Protection and Repatriation Act. The HPMPs will be developed with input from and through consultation with affected Tribes and other affected or interested parties.

Wildlife: At Grand Coulee, emergent, submerged and riparian areas around Lake Roosevelt could experience negative impacts from rapid withdrawal of water from those habitats. Direct effects from impacts to habitat could include increased vulnerability to predation, increased energy expenditure and potential for physiological stresses. Species likely to be impacted include great blue heron, colonial and bank-nesting birds, Canada geese, mallard, deer, beaver, and otter. Additional information is necessary to determine full impacts to wildlife at Lake Roosevelt. Mitigation measures will need to include surveys and inventories of existing wildlife populations and habitat suitability.

IX. CONTINUING ACTIONS

In addition to selection of the SOS PA in this ROD, Reclamation is involved in other actions which may impact or require modification to operations in the future.

Cultural Resources

As previously described, the three SOR agencies are currently finalizing a Programmatic Agreement with all interested and affected parties to address long-term protection and preservation

of significant cultural resources that are or may be adversely affected by FCRPS operations. Actions and activities called for in the final Programmatic Agreement will be carried out over a multiple-year period. The processes to implement the terms of the Programmatic Agreement at specific reservoirs or larger subareas of the project area will be defined in specific agreements with affected Tribes and other affected parties.

Regional Coordination

Organizations and coordination mechanisms referenced in the Biological Opinions which have been established to provide scientific information related to dam and reservoir operations and/or ecosystem management in the Columbia River Basin include the Salmon Recovery Implementation Team, the Independent Scientific Advisory Board, the Technical Management Team, and Memoranda of Agreement/Understanding signed by various Federal officials. Reclamation will continue to participate in these processes through appropriate coordination, consultation, or decision making.

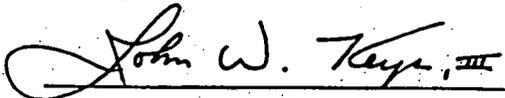
Recovery Plan

The NMFS is preparing a Recovery Plan for endangered Snake River salmon stocks. Reclamation will cooperate with NMFS in development of the Recovery Plan. The NMFS Biological Opinion states that the Recovery Plan will be the best evidence of the amount of improvement required in each life stage and the measures likely to accomplish that improvement. Consistency with the Recovery Plan will be considered in jeopardy determinations. Reclamation recognizes that the system operation strategy described in this ROD may change as a result of the NMFS Recovery Plan for salmon.

X. APPROVED:

I hereby approve the PA as the selected operating strategy for the Bureau of Reclamation.

Issued in Boise, Idaho on February 7, 1997.

A handwritten signature in cursive script that reads "John W. Keys, III". The signature is written in dark ink and is positioned above a horizontal line.

John W. Keys III
Regional Director, Pacific Northwest Region
Bureau of Reclamation

How the Strategies Would Affect River Uses

	SOS 1	SOS 2	SOS 4	SOS 5	SOS 6	SOS 9	PA
Anadromous Fish	Moderate passage survival and adult escapement; slight differences from existing conditions	Survival rates in the middle range of all alternatives; with transport, juvenile survival is high	Survival about the same as SOS 2	Highest in-river survival for Snake River stocks; for other stocks, similar to existing conditions	In-river survival for Snake River stocks varies greatly depending on assumptions	Some of the highest and lowest in-river survival depending on SOS option and stock	In-river survival for Snake River stocks similar to SOS 2; in-river survival for other stocks in the mid to upper range
Resident Fish	Variable conditions among reservoirs and species; pool fluctuations and failure to refill impact productivity	Variable conditions among reservoirs and species; pool fluctuations and failure to refill impact productivity	Best SOS for resident fish; improved productivity at storage projects	Generally poor; some reservoirs have improved conditions under SOS 5c	Impacts generally the same as SOS 5, but not as severe; conditions worse at Lower Granite and John Day	Some of the best and worst impacts of all SOSs; 9a is generally worse, 9b is good, 9c is mixed	Conditions better at Lake Roosevelt, Hungry Horse, Lower Granite, and John Day; worse at Dworshak, Sturgeon improved
Wildlife	Resources largely unchanged from current conditions; continuation of downward trends	Long-term downward trends to resources; slight impacts at John Day due to lower reservoir levels	Moderate to significant increases in wildlife habitat at Lake Pend Oreille, Libby, Hungry Horse, and Grand Coulee	Severe reductions in wildlife habitat at lower Snake and John Day projects	Wildlife habitat impacts similar to SOS 5; 6d limits impacts to Lower Granite	Significant impacts to John Day under 9a and 9c, 9b similar to SOS 4 with no benefit at Libby and Hungry Horse	Impacts at John Day similar to SOS 3c; stable levels allow some restoration of habitat; some impacts at Grand Coulee
Power	Energy production and load shaping maximized; 0.6-1.1% rate decrease	Annual generation costs the lowest of all SOSs except SOS 1; up to 0.4% rate increase	Flows and generation needs mismatched; 1.3% rate increase	Eliminates system load shaping capability; reduces average annual energy generation; 2.5-2.8% rate increase	Generation effects similar to SOS 5; generation costs slightly more than SOS 2c; 0.3-0.9% rate increase	Hydropower generation reduced due to high spill and drawdowns; 2.5-4.0% rate increase	Increased water storage in fall and winter and increased spill mimatches flow and generation needs; 2.0% rate increase
Flood Control	Flooding risk unchanged from current conditions	Flooding risk unchanged from current conditions; expected annual average flood damage costs are \$3.3 million	Increased risk at Bonners Ferry, the upper Columbia, and Clearwater reaches; average annual flood damage costs increase \$0.4 million over SOS 2c	Flood risk in all areas similar to SOS 2	Flood risk in all areas similar to SOS 2	Highest flood risk primarily in upper Columbia; average annual flood damage ranges from \$0.03 to \$0.5 million more than SOS 2c	Upper Columbia flood damages increase \$0.2 million over SOS 2c
Navigation	Normal conditions for shallow draft navigation and transport operating season; reduced costs for Dworshak log transport; net decrease \$0.1 million compared to SOS 2c	Shorter Dworshak log transport operating season; total annual log transport cost for navigation is \$414.4 million	Longer Dworshak log transport operating season; net decrease \$0.2 million compared to SOS 2c	No shallow draft navigation on the lower Snake River for 7 months or permanently; net increase \$14 to \$18 million compared to SOS 2c	No shallow draft navigation on the lower Snake River or Lower Granite for 6 months; net increase \$2 to \$12 million compared to SOS 2c	No shallow draft navigation on the lower Snake for 3 or 6 months; net increase up to \$12 million compared to SOS 2c	Normal operations for navigation; shorter Dworshak log transport season; net increase \$0.1 million compared to SOS 2c
Irrigation, Municipal and Industrial Water Supply	Minor increase in pumping costs at Grand Coulee of \$9,000 over SOS 2c	All irrigation needs served	Minor decrease in pumping costs at Grand Coulee of \$18,400 over SOS 2c	Drawdowns at John Day and Ice Harbor require pump modifications and increase pumping costs by about \$3.3-4.5 million	Drawdowns at John Day and Ice Harbor require pump modifications and increase pumping costs by about \$1.4-2.6 million	Similar impacts to SOS 6 at Ice Harbor and John Day; minor increase in pumping costs at Grand Coulee up to \$34,000	Minor savings in pumping costs at Grand Coulee; \$1.3 million increase at John Day, \$4.3 million increase for MEL
Cultural Resources	Ongoing shoreline erosion and exposure at same rate as current conditions	Ongoing shoreline erosion and exposure at same rate as current conditions	High rates of shoreline erosion at storage projects; decrease in exposure due to high pools	Dramatic increase in exposure at lower Snake River projects; less shoreline erosion at these projects	Similar to SOS 5 but less dramatic	Increased shoreline erosion and exposure due to drawdown; increased bank sloughing due to flow augmentation	Little overall change from current conditions; site exposure increases at Dworshak and John Day
Recreation	Annual benefits could increase up to \$7.9 million under SOS 1b	Annual average recreation benefit is \$13 million	Annual benefits could increase \$4.2 million	Annual benefits could decrease between \$66 and \$90 million	Annual benefits could decrease up to \$40 million	Annual benefits could decrease \$33 to \$97 million depending on option	Annual benefits decrease by \$26 million
Water Quality	Slight decrease in water temperature but increase in total dissolved gas in lower Snake River	Similar to SOS 1 but slight increase in water temperature; decrease in total dissolved gas	Similar to SOS 2 with slightly lower dissolved gas in lower Columbia	Maximum sill concentrations; nearly all excessive dissolved gas eliminated in lower Snake	Major sediment transport similar to SOS 5; dissolved gas and water temperature similar to SOS 2	Highest impacts due to water temperature and total dissolved gas supersaturation	Similar to SOS 2 except high total dissolved gas in the lower Columbia
Change in Total Annual System Costs*	-\$12 to -\$10 million	\$29 million, but SOS 2c equals 0 (no action alt.)	\$81 million	\$266 to \$336 million	\$73 to \$145 million	\$233 to \$400 million	\$164 million

*Includes capital expenditures to modify existing dams

U.S. ARMY CORPS OF ENGINEERS
NORTH PACIFIC DIVISION

RECORD OF DECISION

COLUMBIA RIVER SYSTEM OPERATION REVIEW
SELECTION OF A SYSTEM OPERATION STRATEGY

INTRODUCTION

This record documents the decision of the U.S. Army Corps of Engineers (Corps) to implement existing and modified plans related to reservoir regulation and project operation for Dworshak, Lower Granite, Little Goose, Lower Monumental, Ice Harbor, Libby, Albeni Falls, Chief Joseph, McNary, John Day, The Dalles and Bonneville projects. The Corps selects the System Operation Strategy (SOS) Preferred Alternative (PA) as described in the Columbia River System Operation Review (SOR) Final Environmental Impact Statement and as modified in this Record of Decision.

This record adopts, incorporates and reaffirms the Record Of Decision (ROD) on "Reservoir Regulation and Project Operation, 1995 and Future Years" signed by the North Pacific Division Engineer on March 10, 1995. That ROD documented the Corps' decision to implement measures in the Biological Opinion on "Reinitiation of Consultation 1994-1998 Operation of the Federal Columbia River Power System and Juvenile Fish Transportation Program in 1995 and Future Years" issued by the National Marine Fisheries Service (NMFS) on March 2, 1995, and the United States Fish and Wildlife Service (USFWS) Biological Opinion on four Snake River snails and the Kootenai River white sturgeon dated March 1, 1995. The Corps intends to take action in accordance with that ROD and those Biological Opinions, continuing coordination with NMFS and USFWS and consultation, as may be required, to meet the adaptive management approach to Federal Columbia River Power System (FCRPS) reservoir operations.

In addition to selecting this SOS, the Corps will also continue to investigate various system configurations and improvements identified in the NMFS and USFWS 1995 Biological Opinions and the Corps' 1995 ROD which may improve the survival of certain endangered species based on monitoring, evaluation and research

on species survival. These studies and evaluations are separate actions being conducted per the Corps' 1995 ROD and are not included in the system operating strategies.

BACKGROUND

The Corps projects on the Snake and Columbia Rivers are multiple-purpose projects which were authorized for construction, operation and maintenance variously to serve flood control, power production, navigation, recreation, fish and wildlife, and municipal and industrial water supply. Over the course of years, since their construction and operation, various National Environmental Policy Act documents have been prepared for individual projects, including two environmental impact statements prepared in 1992 and 1993 which analyzed operation of federal projects, primarily to benefit salmon species listed under the Endangered Species Act.

The SOR was conducted jointly by the Corps, Bureau of Reclamation (Reclamation), and Bonneville Power Administration (Bonneville). SOR began in 1990 with a focus on all river and reservoir uses. However, the Endangered Species Act (ESA) began to influence the formulation of alternatives in November 1991, when the first of three Snake River salmon species were listed as threatened or endangered. In September, 1994, the USFWS listed the Kootenai River white sturgeon as endangered. The SOR began to focus on the role system operations could play in salmon and sturgeon recovery while meeting other project purposes.

In general, there were four actions intended from the SOR. They were to 1) develop and implement a coordinated system operating strategy for managing the multiple uses of the Federal Columbia River Power System, 2) provide interested parties with a continuing long-term role in system planning and operations through a Columbia River Regional Forum, 3) renegotiate and renew the Pacific Northwest Coordination Agreement (PNCA), and 4) renew current agreements or develop new Canadian Entitlement Allocation Agreements (CEAA). This ROD applies solely to the first of these four actions, selection of a system operation strategy (SOS). Separate RODs are being prepared for the PNCA and CEAA actions. These RODs will also rely upon the SOR FEIS documentation. No action is currently planned for the Regional Forum as other venues are currently in place, such as the Technical Management Team (TMT) the Implementation Team (IT), and the Northwest Power Planning Council's Fish and Wildlife Program amendment process.

SYSTEM OPERATION STRATEGY (SOS) PREFERRED ALTERNATIVE (PA)

The SOS PA in the SOR Final Environment Impact Statement (FEIS) represents the operation recommended by NMFS and USFWS in their Biological Opinions issued on March 2, 1995, and March 1, 1995, respectively. SOS PA is intended to support recovery of ESA-listed species by storing water during the fall and winter in an attempt to meet spring and summer fish flow objectives. The system would be operated to achieve a high confidence of refill to flood control elevations by April 15 of each year, and to use this water for fish flow augmentation. For listed salmon species, spring flow objectives are established at Lower Granite Dam on the Snake River and McNary Dam on the Columbia River based on runoff forecasts. For the summer, a similar sliding scale flow objective is set at Lower Granite and a fixed flow objective is set at McNary. Summer draft targets were identified at Hungry Horse, Libby, Grand Coulee and Dworshak projects in an attempt to meet the flow objectives for juvenile salmon migration. Libby is also operated to provide flows for the Kootenai River white sturgeon. Lower Snake River projects are operated near minimum operating pool (MOP) during spring and summer. John Day is to be operated at MOP year-round except for flood control. Specific spill percentages are established at run-of-river projects to achieve 80-percent Fish Passage Efficiency (FPE) limited by total dissolved gas levels. Juvenile salmon are transported at all Snake River collector projects in the spring and summer, and only in the summer at McNary Dam.

PUBLIC AND AGENCY INVOLVEMENT

The SOR agencies held numerous public meetings across the region at different points in the review to get people involved and listen to their views. The technical work groups that conducted the SOR analysis included members of other Federal and state agencies, Tribes, and public and interest group representatives.

In 1990 about 800 people attended scoping meetings the SOR team held around the region to explain what the SOR was and to gather comments on the scope of the study. In September 1992, nearly 500 people attended 14 mid-point meetings to learn about and comment on the strategies being considered. Over 500 people turned out to comment on the Draft EIS at public meetings held around the region in the fall of 1994.

Meetings were held in Boise, Lewiston, and Sandpoint, Idaho; Kalispell and Libby, Montana; Grand Coulee, Pasco, and Seattle,

Washington; and Portland, Oregon. The SOR agencies received 214 written comments on the Draft EIS. The Final EIS was released to the public on December 19, 1995, and several written comments were received.

The SOR team also put together a variety of publications to educate the public about how system operations along the Columbia River actually work. A newsletter was mailed to over 5,000 homes and businesses regularly over the six-year life of the SOR to inform people about new developments in the study and to present information on river management issues.

SECTION 7 CONSULTATION

Fourteen system operation strategies in the SOR Draft EIS were provided to NMFS and USFWS in the 1995 Supplemental Biological Assessment as part of the reinitiation of consultation on the 1994-1998 proposed operations. As a result of this consultation, NMFS and USFWS issued separate Biological Opinions which addressed the effects of the FCRPS operation upon listed species within their jurisdiction.

The USFWS in the March 1, 1995, Biological Opinion on the Kootenai River white sturgeon recommended a Reasonable and Prudent Alternative (RPA). The USFWS adopted the non-jeopardy Biological Opinion dated July 27, 1994, on the bald eagle, Lake Roosevelt population, and concurred that the action is not likely to adversely affect the endangered gray wolf, threatened grizzly bear, and the endangered peregrine falcon. The USFWS also issued a non-jeopardy Biological Opinion on Snake River snails.

NMFS in their March 2, 1995, Biological Opinion also recommended a RPA and concluded that the RPA does not jeopardize the continued existence of the spring/summer and fall Chinook, and does not reduce appreciably the likelihood of survival and recovery of the Snake River sockeye salmon.

The Corps continues to coordinate with NMFS and USFWS on operations. Under the adaptive management concept, operations are adjusted in-season as well as year-to-year as scientific information is collected and evaluated. Several regional forums have been established to facilitate making operational recommendations to the Corps.

A Technical Management Team (TMT) makes recommendations to the Corps and Reclamation on weekly management of river operations

related to flows, spill and transport. The Implementation Team (IT) coordinates activities of federal, state and tribal sovereigns for implementation of regional plans to restore anadromous fish and addresses weekly issues raised by the TMT. The Executive Committee oversees implementation activities and, if the IT can not resolve an issue, makes final recommendation to the Corps and Reclamation on operational changes. All forums consist of representation from Federal, state, tribal and regional agencies.

Through the TMT discussions, the Corps can make adjustments in project releases, spill and juvenile transportation for salmon. In addition, the Corps is continuing to coordinate with USFWS on operational guidelines for the Kootenai River white sturgeon through the TMT process. The status of continuing coordination efforts is discussed in the selected SOS paragraphs below. The Corps will continue to work with both NMFS and USFWS to evaluate operations recognizing the annual variation in precipitation, runoff, and biological requirements of all affected species, and make appropriate adjustments.

In July 1996, NMFS proposed several Snake River and Columbia River Basin steelhead stocks for listing as threatened and endangered. The Corps will coordinate with NMFS on the proposed listings. The Corps may modify the selected SOS after evaluating effects on the proposed steelhead stocks and considering the recommendations of the TMT.

RESPONSE TO COMMENTS ON THE SOR FINAL EIS

Seven letters commenting on the SOR Final EIS were received. In addition, the Corps has continued to coordinate with the regional entities, NMFS and USFWS on system operating strategies. In evaluating the comments and regional discussions, the Corps has identified the following new information or continuing unresolved issues: cultural resources, dissolved gas levels, water temperature control, baseline data and monitoring, Columbia River Treaty, and preferred reservoir operations.

Cultural Resources

Fluctuating water levels and associated shoreline erosion have the potential to adversely affect significant cultural resources at all Federal reservoirs in the FCRPS. The National Historic Preservation Act requires Federal agencies to take into account these adverse effects and to formulate treatments to address

them. The Confederated Tribes of the Colville Reservation expressed concern regarding fulfillment of agency commitments to formulate such treatments and to carry out cultural resource management activities in cooperation with the Tribes.

The Corps, Reclamation, and Bonneville, are currently in the process of cooperatively preparing and consummating a Programmatic Agreement with the President's Advisory Council on Historic Preservation, the involved State Historic Preservation Officers, other affected agencies, and Federally recognized Tribes in the Columbia River Basin.

Pursuant to the Programmatic Agreement, the Corps, along with other Federal agencies, will develop individual Historic Preservation Management Plans (HPMP) for each reservoir which will identify significant cultural resources, the approaches to resource protection, preservation and treatment, the framework for research designs for data recovery where data recovery is the preferred treatment, plans for site monitoring, plans for public education and interpretation of cultural materials, and plans for the long-term curation of recovered artifacts and information.

The HPMPs will be developed through consultation with affected Tribes and other interested parties, and will also address issues required by other relevant legislation, including enforcement of the Archeological Resources Protection Act, provisions of the Native American Graves Protection and Repatriation Act, and the American Indian Religious Freedom Act.

Dissolved Gas Levels

The Environmental Protection Agency (EPA) commented that a fish passage spill program, operated in accordance with the short-term modification/variance request by NMFS, benefits salmon recovery. However, EPA contends that any violation of the total dissolved gas (TDG) standard represents an increment of biological risk to salmonids and that a long-term solution to minimize elevated TDG levels from spill operations is warranted. EPA further stated that if consideration is given to a change in the TDG standard for the Columbia and Snake Rivers, it would constitute a site specific standard which is a formal change to state water quality standards. Such a decision to adopt a site specific standard would need to be developed based on a scientifically credible and defensible basis, and submitted to EPA for approval after public participation and formal adoption by the state or tribe.

The Corps is closely monitoring dissolved gas levels above and below each of its mainstream Columbia and Snake Rivers projects on a real-time basis. Starting in 1996, each of the Corps districts is responsible for collecting that information at their respective projects, thus allowing a quicker response time for maintenance and repair purposes. Quality control measures have been developed and implemented to ensure timeliness, consistency and reliability of the monitoring. Based on real-time field data, change to spill and other reservoir operations can be made quickly to prevent and/or correct excessively high dissolved gas conditions.

The Corps is also concerned about dissolved gas levels due to the fish passage spill program as well as involuntary spill due to high flows or limited powerhouse capacity. The Corps is conducting a Dissolved Gas Abatement Study, for which Phase I has been completed, to address long-term measures to reduce gas levels and their effects on salmon. The Corps has also recognized the need to include a Dissolved Gas Management Appendix to the Annual Water Management Plan. In the near-term, the Corps will provide fish passage spill subject to the following conditions: 1) spill requests which would exceed state water quality standards will be coordinated with the appropriate state agencies, 2) a comprehensive monitoring and evaluation program is operational, and 3) spill at the lower Snake and Columbia River projects would not exceed criteria identified in NMFS Biological Opinion. The Corps agrees with EPA that a long-term solution that minimizes elevated TDG levels is appropriate. To that end, the Corps will continue to coordinate with EPA, NMFS, states, and tribes as appropriate.

Water Temperature

According to EPA, water temperature standards are being violated, and elevated water temperatures are considered to be a primary limiting factor for fisheries restoration. EPA commented on three issues related to water temperature. First, cold water releases from Dworshak and other deep reservoirs should be considered. Second, passage of juveniles through the warm water forebays as quickly as possible is needed, Third, cooler water needs to be provided for fish ladders.

Water temperatures and the effects of cool water releases from Dworshak and other projects were addressed in the SOR FEIS. NMFS has considered the temperature effects of the preferred alternative in its Biological Opinion. NMFS prioritized releases

of water for juveniles in the summer over releases in late summer for adults. NMFS also stated that when possible, release of cool water in August and September should be considered. The Corps, based on its familiarity and understanding of the Biological Opinion and the currently-available scientific uncertainty, has decided that water releases should be prioritized for juveniles and will consider releasing water from Dworshak based on the recommendations of the TMT.

Reducing the delay of juveniles in the forebay is one potential benefit of surface bypass collection technology. The Corps is evaluating this technology as identified in the NMFS Biological Opinion and the Corps' March 10, 1995, ROD on "Reservoir Regulation and Project Operation, 1995 and Future Years".

NMFS also requested the Corps to investigate water temperature control in adult ladders as specified in its Biological Opinion. The Corps is investigating water temperature control by collecting additional ladder water temperature data and evaluating various engineering corrective actions. The Corps will coordinate with EPA on their concerns on water temperatures as appropriate.

Baseline Data and Monitoring

EPA indicated the need for collection of baseline data to assess water quality, sediment and biological effects of proposed operational measures and in particular, drawdown actions.

The Corps currently monitors dissolved gas, water temperature, and turbidity at all of its mainstream Columbia and Snake River projects. Regarding the effects of drawdown actions, the Corps has initiated a Lower Snake River Juvenile Salmon Migration Feasibility Study and NEPA documentation on drawdown alternatives of the lower Snake River projects to spillway crest and natural river levels. Included in that study will be data collection and assessment of water quality, sediment and biological effects of drawdowns.

Columbia River Treaty

Prior to signing the 10 March 1995 ROD, the Chair of the Canadian Entity, by letters, and the Canadian Government, by diplomatic note, expressed concerns to the U.S. Entity and the U.S. Government respectively on the operation of Libby Dam to provide for sturgeon spawning in the Kootenai River below Libby. Since

that time, the Canadian Government has sent additional diplomatic notes to the U.S. Government on the operation of Libby for sturgeon again expressing their concern over the effects of the operation on downstream power generation in Canada and their belief the operation of Libby for Kootenai River White Sturgeon under the ESA is inconsistent with the Columbia River Treaty. At the present time, the matter is under consideration by the U.S. Department of State.

PREFERRED SYSTEM OPERATING STRATEGIES

During the completion and subsequent to the distribution of the SOR Final EIS, a variety of SOS have been proposed by different entities. These various strategies have been discussed in regional forums such as the TMT and Implementation Team meetings. The Corps will continue to coordinate with NMFS, USFWS, NPPC, states, Tribes and other interested parties on a preferred SOS. The Corps will utilize information developed in the SOR as well as new technical information being collected in making a decision on revising, modifying, or changing the SOS. Three specific operations which differ from SOS PA are discussed below.

Sturgeon

The USFWS, in an April 19, 1996 letter, identified operational guidelines for sturgeon below Libby Dam for 1996. It was indicated that these operational guidelines could also be used for future years. In July 1996, the USFWS released a draft Recovery Plan for public review and comment. The draft Recovery Plan proposed flow objectives based on annual runoff conditions.

The Corps will continue to coordinate with USFWS as additional biological information is obtained and may adjust selected SOS operation of Libby for sturgeon as discussed below.

Albeni Falls

The NPPC's Fish and Wildlife Program requests that the Corps operate Lake Pend Oreille at higher winter elevations for a three-year test of effects on shoreline spawning of kokanee. In a letter dated December 7, 1995, to NPPC, the Corps indicated its intent to implement the test starting in the winter of 1996 and identified several requirements which needed to be addressed prior to the test. The Corps is continuing to work with NPPC and other interested parties to conduct the three-year test.

John Day

The SOS PA included operation of John Day at minimum operating pool. As specified in the NMFS Biological Opinion, operation of John Day at MOP would occur after appropriate mitigation measures are assured. The Corps, in its March 10, 1995 ROD on "Reservoir Regulation and Project Operation, 1995 and Future Years", stated John Day would be operated near the lowest elevation possible that does not significantly impact irrigation until appropriate mitigation was identified and assured. Without additional authority, the Corps can not completely mitigate for impacts that may be caused by operation at MOP. The 1995 ROD further states that the Corps would continue to work with NMFS and the region to complete the necessary steps, including determination of appropriate mitigation, NEPA documentation, and Congressional authorization and appropriation, to implement this particular RPA measure.

The Corps, in receiving its Fiscal Year 1996 appropriation in November 1995 for work on the Columbia River Fish Mitigation Project, was instructed by a Committee of Congress to defer further work on drawdown at John Day pending providing the committee with scientific justification for this measure. The Corps in a letter dated November 28, 1995, to NMFS requested that NMFS assume the lead role in developing the scientific justification. NMFS responded in a letter dated March 5, 1996, that it is reviewing the benefits of this measure and would provide the information by spring 1996. The Corps has received this scientific information from NMFS and has provided it to Corps Headquarters for transmittal to Congress. Until new instructions are received from Congress, the Corps will continue to operate John Day near elevation 262.5 feet and work with NMFS, NPPC and other regional interests on potential modification of the operation of John Day.

SELECTED SYSTEM OPERATION STRATEGY

This selected system operation strategy (SOS) supports recovery of ESA-listed species as outlined in the NMFS and USFWS Biological Opinions, specifically the Reasonable and Prudent Alternative and the Incidental Take Statement contained in these documents. Further, it is consistent with the Juvenile Fish Transportation Program contained in a Section 10 permit issued to the Corps for that activity by NMFS.

The selected SOS adopts the adaptive management approach of the

RPA's. Under this approach, operations may be modified in-season and/or year-to-year based upon new scientific information or to support studies for long-term configuration changes. A Technical Management Team will make in-season recommendations to the Corps based on runoff conditions, fish migration and other factors. There are also various regional forums, such as the Implementation Team, where system operations are proposed and discussed. The Corps will continue to coordinate with NMFS, USFWS, the Northwest Power Planning Council (NPPC), states, and Tribes on newly proposed reservoir operations. In coordination with these groups, the Corps may need to change operations for flood control, emergencies, approved research, or other project uses. The Corps relies upon existing authority and information in the SOR FEIS to evaluate such new operations, and to adjust the SOR in coordination with NMFS and USFWS. The Corps supports the decisions made by Bonneville and Reclamation on their actions as a result of the coordinated consultations and evaluations accomplished during the SOR process. The Corps will continue to operate the FCRPS projects for multiple-uses including flood control, navigation, recreation, fish and wildlife, hydropower production, municipal and industrial water supply, irrigation, and to meet other project uses.

Flow Objectives

The Corps will operate Dworshak and Libby Reservoirs in an attempt to meet flow objectives identified for Snake River salmon stocks and the Kootenai River white sturgeon.

For Snake River salmon, the seasonal average flow objectives range from 85 to 100 kcfs from April 10 to June 20 and 50 to 55 kcfs from June 21 to August 31 in the lower Snake River measured at Lower Granite, and 220 to 260 kcfs from April 20 to June 30 and 200 kcfs from July 1 to August 31 in the lower Columbia River measured at McNary. The flow objective in any year would be determined using a sliding scale based on forecasted runoff as specified in the Biological Opinion.

As specified in the Biological Opinion for the Kootenai River white sturgeon, the flow objectives are to increase flows at Bonners Ferry beginning April 15 to achieve 15 kcfs on May 1, maintain 15 kcfs from May 1 to the date of initial sturgeon spawning or June 1, then to release the maximum discharge possible using full powerhouse capacity and spilling to the maximum possible without exceeding TDG standards for up to 42 days to achieve a 35 kcfs flow objective at Bonners Ferry, and

then to reduce releases to achieve 11 kcfs at Bonners Ferry for 21 days. In a letter dated April 19, 1996, USFWS identified operational guidelines for Kootenai River white sturgeon in 1996 that are different from the March 1, 1995, Biological Opinion based upon monitoring and study results to date. The Corps' operation of Libby in 1996 was primarily for flood control due to expected high runoff conditions and considered in-season adjustments to attempt to meet the proposed operational guidelines. In the July 1996 draft Recovery Plan for sturgeon, a tiered approach for those flows based on annual runoff is proposed. This approach would call for no flow augmentation in low water years and increasing flow objectives in medium and higher water years. The Corps will continue to participate with USFWS and NMFS in evaluating USFWS proposed operational guidelines for sturgeon in 1997 and future years, as well as for other affected species. The Corps may adopt different operations for storage based upon these discussions and the final Recovery Plan.

The Corps recognizes the scientific debate concerning these opinions and the various regional views. Based on continued coordination with NMFS, USFWS, NPPC, states and Tribes, the Corps may adopt changes in the above flow objectives.

Spill

The Corps is prepared to provide spill at Dworshak in an attempt to meet downstream flow objectives, and spill to achieve 80 percent fish passage efficiency (FPE) at Lower Granite, Little Goose, Lower Monumental, Ice Harbor, McNary, John Day, The Dalles and Bonneville, subject to the following conditions: 1) spill requests which would exceed state water quality standards will be coordinated with the appropriate state agencies, 2) a comprehensive physical and biological monitoring and evaluation program is operational, and 3) spill at the lower Snake and Columbia River projects would not exceed criteria identified in NMFS Biological Opinion. While it is the Corps' spill management goal to minimize operations that cause high levels of TDG, it is difficult to manage to an exact level with all of the variables in the system. The Corps will monitor the TDG levels and may make spill volume adjustments in an effort to provide more favorable passage conditions for the listed juvenile and adult Snake River salmon species. These adjustments may occur if evidence of gas bubble disease is observed in fish, or if excessive dissolved gas levels occur. Spill may also need to be temporarily adjusted to support approved research or emergencies.

Flood Control Transfer

The Corps will temporarily shift Dworshak system flood control requirements starting with the initial April-to-July forecast prepared on 1 January, if the April forecast predicts runoff at Dworshak of 3.0 MAF or less and if space is available at Grand Coulee. If necessary, the flood control space will be returned to Dworshak by 30 April. The Corps will temporarily transfer system flood control requirements for Brownlee to Grand Coulee, subject to the availability of space at Grand Coulee.

Smolt Transport

The Corps will transport smolts in accordance with NMFS Section 10 Permit #895, or in accordance with an amended permit which would be expected to be consistent with the RPA.

Project Operations

The Corps' in-season decisions on shaping (timing and amount) of releases for both salmon and sturgeon, spill and transport will be based on recommendations of the TMT, which will monitor and evaluate the shaping of available water based on real time flow and biological information throughout the fish passage season. In coordination with NMFS and USFWS, the Corps may operate differently for approved research, flood control, emergency power needs, or multiple-purpose operations for other project uses. Unless the Corps determines that additional water from Dworshak and/or Libby Reservoirs should be released in an attempt to meet flow objectives, the Corps will operate as discussed below.

Dworshak Operation

The Corps plans to maintain 1.5 kcfs minimum discharge at Dworshak from September through April to enhance the probability of being on the flood control rule curve by April, unless higher discharges are required to stay on the flood control rule curve or for short-term power requirements. The Corps plans to operate Dworshak Reservoir to be no higher than a 1,558-foot maximum elevation on December 15 (winter flood control draft maximum elevation). Dworshak may be drafted as low as elevation 1520 by August 31 to meet salmon flow objectives.

Libby Operation

The Corps plans to operate Libby Dam during fall and winter in an attempt to meet a 75 percent level of confidence of being at the flood control requirement on April 15, while meeting the project and system minimum flow and flood control requirements. The Corps will operate Libby Dam in an attempt to meet the sturgeon flow requirements consistent with existing treaties and laws, and will reduce releases if monitoring identifies potential adverse effects of flooding and/or bank erosion, or if requested to reduce releases by USFWS. If the operation for sturgeon results in Lake Kocanusa being above elevation 2439 on August 31, the Corps may, if necessary, lower Libby Reservoir to elevation 2439 by August 31 to meet salmon flow objectives without spilling at Libby.

Albeni Falls Operation

The Corps will operate Albeni Falls during fall and winter in an attempt to meet a 90 percent level of confidence of being at the April 15 flood control elevation while meeting the project and system minimum flow and flood control requirements. Beginning in the fall of 1996, the Corps intends to operate Albeni Falls above elevation 2055 during the winter for a three year test to evaluate potential reservoir level improvements for kokanee spawning and production. Summer operation would be within the normal summer operating range.

Chief Joseph Operations

Reservoir operation during the winter months, October 21 through February 14, is from elevation 956 feet to 930 feet. During goose nesting season, February 15 through May 15, the reservoir lower limit is elevation 950 feet. During the summer months, May 16 through October 20, the reservoir will be operated between elevations 950 and 956 feet.

Lower Snake River Projects

The Corps plans to operate Lower Granite, Little Goose, Lower Monumental and Ice Harbor within a one-foot range above MOP from April 10 until adult fall Chinook salmon begin entering the lower Snake River as determined by the TMT. Lower Granite would be filled after November 15 and all four lower Snake projects would be operated within their normal operating range for the remainder of the water year.

Lower Columbia River Projects

The Corps will operate Bonneville, The Dalles and McNary Reservoirs in their normal operating range. The Corps plans to operate John Day within a one-and-a-half foot range above elevation 262.5, which should not significantly impact irrigation, from April 20 to September 30 each year. Operation near elevation 262.5 feet at John Day will be maintained as long as possible without adversely affecting irrigators. The pool will be raised if irrigation pumping problems occur, except when flood control or other operations require. During fall and winter, the Corps will operate all four lower Columbia River projects within their normal operating range.

TECHNICAL MANAGEMENT TEAM

The Corps will coordinate with the other Federal, state, and tribal representatives in the TMT process and consider TMT recommendations in making final decisions on the operation of Corps projects. Operations described in this ROD may be modified on a case-by-case basis if recommended by the TMT.

ENVIRONMENTAL REQUIREMENTS

The selected SOS, as documented in this ROD and implemented by the Corps, will be in compliance with requirements related to water, air, and land resources; ESA; and fish and wildlife. Since improving conditions for anadromous fish is the objective of the selected SOS, no formal mitigation measures are proposed. The Corps will continue its monitoring and evaluation programs and studies as outlined in the RPA and the incidental take statement in the Biological Opinions so that a decision on a long-term strategy can be made. The Corps will continue to coordinate and consult, as appropriate, with NMFS and USFWS.

The Corps will also continue to meet its responsibilities under the Pacific Northwest Electric Power Planning and Conservation Act through its consideration of the Northwest Power Planning Council's (NPPC) Fish and Wildlife Program. Where the requirements of the Biological Opinion and the NPPC Program are not consistent, the Corps will continue its dialogue with the NPPC.

CONTINUING ACTIONS

In addition to selection of the SOS in this ROD, there are several actions requested in the Biological Opinions which are continuing in the region and may require the Corps to modify its operations in the future.

System Configuration Studies

The Corps is continuing work on system configuration studies and other system improvements identified in the NMFS and USFWS Biological Opinions. System configuration studies are evaluating structural modifications that could be made to Federal projects on the lower Snake and Columbia Rivers to improve juvenile salmon migration. An EIS examining various drawdown scenarios and surface bypass technology for the four lower Snake river projects is being prepared and is scheduled to be completed in 1999. The Corps is also undertaking several immediate and intermediate actions to improve juvenile and adult survival in the near term. As appropriate, the SOS may need to be modified to permit collection of information on long-term strategies or to support implementation of immediate and intermediate actions. In a letter dated April 24, 1996, the Corps agreed with NMFS on a Framework for Implementing and Modifying Actions in the 1995 FCRPS Biological Opinion. With regard to SOS, this framework provides a mechanism to evaluate changes in operation to support the testing, construction or installation of various short-term system improvements and evaluation of long-term alternatives being considered under the System Configuration Study as recommended in the NMFS Biological Opinion.

System Flood Control

In response to elements of the NPPC Fish and Wildlife Program and the NMFS Biological Opinion, the Corps is conducting a review of system flood control operations to determine if flood control criteria can be relaxed to permit further releases of stored water for endangered salmon and sturgeon in the spring and summer migration periods without unduly increasing risk of flooding in the basin. The review will examine impacts from potential revised target flood flows at the Dalles, Oregon. Flood control effects of implementation of sturgeon flow objectives of integrated rule curves at Libby Reservoir are also being evaluated as requested in the USFWS Biological Opinion. Preliminary flood control evaluations are continuing and a report is being prepared.

Cultural Resources

As previously described, the Corps, in cooperation with Reclamation and Bonneville, is currently in the process of preparing a Programmatic Agreement with all interested and affected parties to address long-term protection and preservation of significant cultural resources that are or may be adversely affected by FCRPS operations. Once the Programmatic Agreement is consummated, plans for actions and activities will be carried out over a multiple-year period.

REGIONAL COORDINATION

The Corps notes the various organizations and coordination mechanisms referenced in the Biological Opinions which are established to provide scientific information related to dam and reservoir operations and/or ecosystem management in the Columbia River Basin. Examples include the Salmon Recovery Implementation Team, the Independent Scientific Advisory Board, the Technical Management Team, and Memoranda of Agreement/Understanding signed by various Federal officials. The Corps will continue to participate in these processes through appropriate coordination, consultation, or decision making.

RECOVERY PLANS

The NMFS and USFWS are preparing Recovery Plans for the endangered Snake River salmon stocks and the endangered Kootenai River white sturgeon, respectively. The Corps will cooperate with each agency in the development of Recovery Plans.

The NMFS Biological Opinion states that the Recovery Plan will be the best evidence of the amount of improvement required in each life stage and the measures likely to accomplish that improvement. Consistency with the Recovery Plan will be considered in jeopardy determinations. The USFWS states that the 1996-1998 RPA for sturgeon may change pending the completion of its Recovery Plan for sturgeon. A draft recovery plan for sturgeon, dated July 1996, has been prepared by the USFWS and has been released for public review and comment. The Corps has provided comments on the draft recovery plan to the USFWS and will comply with the final plan to the extent possible.

The Corps recognizes that the system operation strategy described in this Record of Decision may change as a result of the NMFS

Recovery Plan for salmon and the USFWS Recovery Plan for sturgeon.

STATEMENT OF DECISION

I have taken into consideration the environmental consequences, the economic costs, and the biological data supporting this action. The selection of the system operation strategy which is consistent with the reasonable and prudent alternative and incidental take statement in the Biological Opinions prepared by NMFS and USFWS will meet Corps responsibilities under the ESA to avoid jeopardy to the Snake River sockeye salmon, the Snake River spring/summer Chinook and fall Chinook salmon, four Snake river snail species, and Kootenai River white sturgeon and will not further adversely affect their critical habitat. Further, it will not reduce appreciably the likelihood of the survival of the Snake River sockeye salmon and will not adversely affect bald eagles, peregrine falcons, grizzly bears, Snake River snails, or gray wolves. The reasonable and prudent alternative recognizes the need to balance the multiple uses of the projects, and it improves in-river conditions for the benefit of the listed Snake River salmon and the Kootenai River white sturgeon while recognizing and minimizing adverse effects on the environment. The selected system operation strategy is identified by NMFS and USFWS as the preferred plan to support recovery of endangered species. This decision is consistent with federal statutes and international treaties relevant to operation of the FCRPS.

I have also taken into account the Northwest Treaty Tribes' fishing rights, the United States trust responsibility to Indian Tribes and its responsibility to act in a manner consistent with this trust responsibility. Actions which the Corps will implement are designed to lead to increased survival and recovery of the listed salmon species with consequent beneficial results to the Treaty Tribes' fishery and benefits to the Northwest Region as a whole. Although there is scientific disagreement, the conclusions in the NMFS and USFWS Biological Opinions take into account the differing scientific opinions and interpretations of available information. The Corps' review of the Biological Opinions and the scientific information available at the time of those opinions, the continuing research and data being developed in accordance with those opinions and the scientific judgment exercised in formulating the opinions, is consistent with its trust responsibilities. In addition, NMFS and USFWS considered the differing scientific (biological) information and applied their expertise to address the effects on other species of

interest to Northwest Tribes.

I hereby approve SOSPA as the selected operating strategy for the Corps of Engineers.

Issued in Portland, Oregon on 20 February 1997.



Robert H. Griffin
Brigadier General, U.S. Army
Division Engineer

DEPARTMENT OF ENERGY

Bonneville Power Administration

Columbia River System Operation Review on Selecting an Operating Strategy for the Federal Columbia River Power System (FCRPS)

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE)

ACTION: Record of Decision (ROD)

SUMMARY: The Columbia River System Operation Review (SOR) Environmental Impact Statement (EIS) assessed operations at the 14 Federal dams and reservoirs on the Columbia and lower Snake Rivers that have a major influence on the multiple purpose system operation, and for which power production is coordinated under the Pacific Northwest Coordination Agreement. Lead agencies for this six-year process were the U.S. Army Corps of Engineers (Corps), the U.S. Bureau of Reclamation (Reclamation), and the Bonneville Power Administration (BPA).

With a growing Pacific Northwest population and limited opportunities for further development on the Columbia River, pressure on river resources and access to them has intensified in recent years. The Federal agencies responsible for river management have tried to accommodate the many demands placed on the river, but conflicts have arisen. In 1990, the agencies recognized the need for a review of the multiple purpose management of the Federal Columbia River Power System.

To meet this need, four proposed actions were considered through the SOR: 1) to develop and implement a coordinated system operating strategy (SOS) for managing the multiple uses of the Federal Columbia River system into the 21st century; 2) to provide interested parties with a continuing long-term role in system planning and operations through a Columbia River Regional Forum; 3) to renegotiate and renew the Pacific Northwest Coordination Agreement (PNCA); and 4) to renew current agreements or develop new Canadian Entitlement Allocation Agreements (CEAA). This Record of Decision (ROD) applies solely to the decision BPA is making on the first of these four actions, selection of a system operating strategy.

Seventeen purposes for SOR were identified in the Final EIS. They ranged from resource protection to maintaining the social and economic health of the region. Institutional and legal considerations were also included. These purposes were used to assess and ultimately select an overall strategy for operating the FCRPS from among the wide variety of possible alternatives considered. The alternative that is being chosen, the selected strategy, is a combination of specific operating requirements for particular reservoirs and a few system-wide criteria designed to accommodate several

river areas. While it is not possible to maximize the benefit in all resource areas due to the competing nature of the many resources, the selected strategy achieves a reasonable combination of operating requirements which emphasize natural resources, such as fish and wildlife, yet preserves much of the benefits obtained as a result of system development. The potential effects on each river resource for all of the alternatives considered are presented in the Final EIS. The Main Report summarizes all of these potential effects. The appendices to the Final EIS provide more detailed analysis for each specific resource area.

The joint involvement in SOR by agencies sharing Columbia River management responsibilities was an important feature of the SOR. Historically, these agencies operated with a certain amount of independence. Growth and the imposition of more exacting environmental oversight made closer coordination imperative. Accordingly major commitments of staff and funding for the SOR were made by the Corps, BPA and Reclamation. They joined as equal partners to conduct this review. Each of the lead agencies has prepared a ROD on the System Operating Strategy to address the agency's individual role in system operation. This ROD is issued by BPA.

THE LEAD AGENCIES: U.S. Department of the Army, Corps of Engineers: The Corps operates and maintains 12 of the 14 projects under study in the SOR. These projects control the lower Snake and Columbia Rivers and provide storage in the upper reaches of both rivers. The Corps has a major role in coordinating multiple uses of the system. It is responsible for managing flood control storage at all major reservoirs in the Columbia River Basin; maintaining navigation locks and channels to accommodate river transportation; and operating fish passage, power plant and recreation facilities.

U.S. Department of the Interior, Bureau of Reclamation: Reclamation operates Grand Coulee and Hungry Horse Dams, two of the storage projects included in the SOR. Because of its size and location, Grand Coulee Dam plays a prominent role in the coordinated operation of the Columbia River system. Storage at Hungry Horse is also valuable because of its headwaters location; water released from Hungry Horse passes through many downstream projects and produces additional energy.

U.S. Department of Energy, Bonneville Power Administration: BPA markets and distributes power generated by the Corps and Reclamation at Federal dams on the Columbia River and its tributaries. The agency sells power from the dams and other generating plants to public and private utilities and large industries, and it builds and operates transmission lines that deliver the electricity. To achieve effective power marketing, the Corps and Reclamation coordinate project operations with BPA. BPA supports system operation by compiling information on weather and predicted streamflows, by modeling future short-term operations, and by optimizing power production.

The Corps and Reclamation develop operating requirements for their projects. These are the limits within which a reservoir or dam must be operated. Some requirements were established by Congress when the projects were authorized; other requirements

have evolved as operations over the years have progressed. Within the operating limits developed by the Corps and Reclamation, BPA schedules and dispatches power. This process requires continuous communication and coordination among the three agencies.

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DECISION:

BPA in conjunction with the Corps and Reclamation has selected a System Operating Strategy (SOS) for the FCRPS. The strategy is intended to meet the underlying need for the SOR and its purposes as originally identified at the beginning of the study. In particular, the strategy 1) supports recovery of ESA-listed fish species by storing water during the fall and winter to meet spring and summer flow targets; 2) protects other resources by managing detrimental effects caused by operations for ESA species by establishing minimum summer reservoir levels, providing public safety through flood protection, and other actions; and 3) provides for reasonable power generation. This strategy was identified as the "SOS Preferred Alternative" in the SOR Final EIS with two exceptions noted below. The lead agencies have also committed to develop and implement, in full cooperation with affected Tribes and agencies, agreements, plans, and actions for management of the impacts of system operations on cultural resources.

The specific operating requirements to meet the selected strategy stem from the "reasonable and prudent alternatives (RPAs)", in the March 2, 1995 Biological Opinion (BO), prepared by the National Marine Fisheries Service (NMFS) and the March 1, 1995 Biological Opinion (BO), prepared by the U.S. Fish and Wildlife Service (USFWS). On March 10, 1995, BPA issued a Record of Decision regarding the biological opinions for operation of FCRPS during 1995 and beyond. The operating requirements adopted from the RPAs and incorporated in the agencies' selected strategy are summarized below.

The Federal agencies will operate the FCRPS to:

1. Manage reservoir operations during the fall and winter to provide specified percentages of confidence of refill to flood control levels in April each year.
2. Provide additional flow augmentation in the Columbia and Snake Rivers and manage these flows during the fish migration season to optimize anadromous fish survival.
3. Release the stored flow augmentation water during the migration season in a manner that strives toward specified flow targets measured at Lower Granite and McNary projects.
4. Manage spill levels at mainstem projects to attain 80 percent fish passage efficiency up to specified total dissolved gas supersaturation percentages, and provide the amount of spill based on actual flow.
5. Transport all juvenile anadromous fish collected at the lower Snake River collector projects during the spring unless established criteria in the Corps' Juvenile Fish Transportation Plan cannot be met or as otherwise directed through regional real-time management processes. During the summer, transport all juvenile anadromous fish collected at the lower Snake River collector and McNary projects unless established criteria cannot be met or as directed.
6. Operate lower Snake River reservoirs within one foot of minimum operating pool (MOP) during the fish migration period.
7. Operate John Day Reservoir within one and one-half foot of minimum irrigation pool (MIP) from April 20 to September 30 each year.

8. Operate turbines within one percent of peak efficiency during the juvenile and adult fish migration seasons which are defined as March 15 through October 31 in the Columbia River and March 15 through November 30 in the Snake River.
9. Manage reservoirs elevations at storage projects to maximum summer draft limits to minimize detrimental effects on resident fish, wildlife and recreational facilities.
10. Protect against flooding by satisfying flood control requirements at all projects.
11. Operate Libby Reservoir consistent with the recommendations of the USFWS BO for Kootenai White Sturgeon.
12. Operate Lake Pend Oreille during the winter at higher levels for a three-year test period in an attempt to improve resident fish spawning and production.

The BOs issued by NMFS and USFWS also contained a number of reasonable and prudent alternatives that direct the agencies to complete a variety of research, development and demonstration projects. These activities may result in future modifications to the physical system and will complement this operational decision or help provide mitigation for the effects of this decision. Decisions on such physical modifications are separate from the operating decision being made here and will be addressed by the Corps in separate processes such as the Lower Snake River Feasibility Study.

Exceptions: The requirements that define the selected strategy outlined above reflect the SOS Preferred Alternative considered in the SOR Final EIS with two exceptions: 1) in the SOS Preferred Alternative, John Day Reservoir was assumed to operate at minimum operating pool levels year-round with a wider operating range, instead of operating at MIP and 2) Albeni Falls was not held to higher winter elevations for resident fish. The impacts of such modifications were however analyzed in the SOR Final EIS. Several alternatives in the EIS had John Day Reservoir operating at levels other than MOP. Likewise, higher winter elevations at Albeni Falls were analyzed in an alternative that was designed to maximize benefits for resident fish, wildlife and recreation (SOS 4c).

BACKGROUND:

A detailed history of the Federal hydroelectric system in the Columbia River Basin is provided in Chapters 2 and 3 of the Final EIS. The 14 Federal dams and reservoirs and their geographical and social setting are described. The electrical transmission system and the range of resources and activities associated with the river are explored.

The need for the project was to review the multiple purpose management of the Federal Columbia River system. To meet that need, the agencies attempted to determine how to balance or mix the often conflicting and competing needs of river users and

resources while safeguarding the environment. Initially, each of the river resources and activities were given equal weight in the SOR. This approach was altered on December 20, 1991, when the Snake River sockeye salmon was listed as an endangered species under the Endangered Species Act (ESA). On May 22, 1992 the spring, summer and fall runs of chinook salmon in the Snake River were listed as threatened. In a separate action, the USFWS listed Kootenai River white sturgeon on September 6, 1994.

These developments resulted in a process with two subparts. One was the assessment of the entire system by the operating agencies - the SOR; the other consisted of consultation on certain listed species, as required by ESA.

In March of 1995, each of the three Federal operating agencies issued individual Records of Decision implementing the NMFS and USFWS BOs for 1995-1998 river operations. This decision reaffirms the ROD issued in March 1995 and is made upon full consideration of the entire SOR EIS record.

TRIBAL AND PUBLIC PARTICIPATION:

The SOR began in 1990 and was designed to provide specific information on river operations, to examine the effects on all river resources of various operating scenarios and to elicit active participation from interested organizations, governments and citizens of the Pacific Northwest. The effort began with an extensive outreach program to solicit the views of all citizens with an interest in river operations (see *Scoping Document*, 1991).

Fourteen technical work groups were created to study the full range of resources and activities associated with Columbia River operations. Approximately 200 Federal and State agency specialists and representatives of industry, citizen and environmental groups participated during some portion of the review, many for the entire duration. Leaders and technical staff of 13 Indian Tribes were involved. Representatives of Tribal governments met with agency managers and provided written comment to make known their concerns about the SOR process and the impacts of dam operations. Tribal resource specialists from several Tribes attended meetings of some of the technical Work Groups.

Three series of public meetings were conducted during the analysis. These meetings accompanied review periods that afforded all parties an opportunity to review the analysis as it was developed and to offer comments. A complete history of the public involvement effort is contained in Chapter 9 of the Final EIS.

Alternatives Considered

More than 90 approaches to river system operations were initially considered. Many were proposed by citizens and organizations, others were suggested by SOR work groups and the project managers. Computer models simulated implementation of all 90 alternatives so that the environmental and social effects and impacts on power generation, natural and cultural resources, and all other river activities could be assessed and compared (see *Screening Analysis, Volumes 1 and 2*, BPA et. al., 1992).

As a result of this initial screening process by SOR work groups and public review of the results, many of the 90 alternatives were redesigned, combined or deemed not practical. Seven System Operation Strategies (SOS) were then analyzed in detail. Various options within these seven strategies were included, so that a total of 21 alternatives were considered for the Draft EIS.

The Draft EIS alternatives were further modified following broad public review of the draft analysis and based on the comments received from Tribes, State and Federal agencies, industry, environmental organizations, and individuals (see Appendix T, Final EIS). Six of the 21 alternatives in the Draft EIS were carried into the analysis for the Final EIS without modification (SOSs 1a, 1b, 2c, 5b, 6b, and 6d). Four alternatives in the Draft EIS were modified following public comment and reconsidered in the Final EIS (SOSs 4c, 9a, 9b, and 9c). Three new alternatives were identified and evaluated in the Final EIS in response to public comment (SOSs 5c and PA) or as a result of recommendations from the 1994-98 BO issued by NMFS (SOS 2d). Several Draft EIS alternatives were eliminated as unreasonable based upon additional analysis results and consideration of public comment (SOSs 2a, 2b, 3a, 3b, 4a, 4b, 5a, 6a and 6c). The Final EIS Main Report describes the evolution of the alternatives on pages 4-4 and 4-5.

The following 13 System Operating Strategies received detailed consideration in the Final EIS. The numbering is not consecutive due to adjustments made in the list of alternatives considered between the Draft and Final EISs.

SOS 1a - Pre-Salmon Summit Operation: This strategy simulates the way the system was operated from 1983 through the 1990-91 operating year, prior to the listing of salmon species under the ESA. Elements of an alternative recommended by the Columbia River Alliance, Recover 1, were included.

SOS 1b - Optimum Load-Following Operation: This option would maximize system benefits for the traditional uses of the system, power generation, flood control, and navigation. It simulates the way the system was operated prior to the Northwest Power Planning and Conservation Act of 1980.

SOS 2c - Current Operation/No Action Alternative: This alternative calls for operations consistent with how the system was operated in 1992-93, after three salmon species were listed under the ESA.

SOS 2d - 1994-98 Biological Opinion: This alternative represents the operation that would have occurred had the recommendations resulting from the ESA consultation completed in 1994 been implemented. It is closest to the way the system was being run just after the analysis in the Draft EIS was completed.

SOS 4c - Stable Storage Project Operation with Modified Grand Coulee Flood Control: This alternative uses specific monthly elevation targets year-round to improve conditions at the major Federal storage projects for recreation and resident fish and wildlife. In response to public comments, this alternative includes minimum elevation levels, known as Integrated Rule Curves (IRCs) for Libby and Hungry Horse Reservoirs.

SOS 5b - Natural River Operation: In this alternative, the four lower Snake River projects would be drawn down to near riverbed levels for four and one-half months during the spring/summer salmon migration period. Construction of new low-level outlets would be required to allow water to bypass the dam, powerhouse, and spillway.

SOS 5c - Permanent Natural River Operation: In this alternative, the four lower Snake River projects would be drawn down to near riverbed levels year-round.

SOS 6b - Fixed Drawdown Operation: In this alternative, the four lower Snake River projects would be drawn down to near spillway crest for four and one-half months during the spring/summer salmon migration period.

SOS 6d - Lower Granite Drawdown: This strategy is similar SOS 6b but draws down Lower Granite only to near spillway crest for four and one-half months.

SOS 9a - Detailed Fishery Operating Plan (DFOP): This operation was recommended by the region's fish agencies and tribes through the Columbia Basin Fish and Wildlife Authority. It would establish flow targets at Lower Granite and The Dalles, draw down lower Snake River projects to near spillway crest for four and one-half months, specify spill levels at run-of-river projects, and eliminate fish transportation.

SOS 9b - Adaptive Management: This modification of DFOP would establish flow targets at McNary and Lower Granite, specify maximum water releases from upstream projects, draw down lower Snake River projects to minimum operating pool, draw down John Day to minimum irrigation pool, and specify spill levels at run-of-river projects.

SOS 9c - Balanced Impacts Operation: This strategy was originally recommended by the State of Idaho, which subsequently withdrew its support. It would draw down the four lower Snake River projects to near spillway crest for about two months during the spring salmon migration period. It also includes flow augmentation at 1994-98 BO levels, IRCs at Libby and Hungry Horse, and a higher winter operating elevation at Albeni Falls.

SOS Preferred Alternative: This strategy adopts operations recommended in the BOs issued in March of 1995. It supports the recovery of ESA-listed fish by storing water in reservoirs during the fall and winter to meet spring and summer flow targets. Minimum summer reservoir levels are used to minimize detrimental effects on other natural resources. Previous adopted levels of flood protection are provided which allows for continued power generation, adequate levels of irrigation and maintenance of shallow-draft navigation.

One additional alternative was considered that was identified after the comparative analysis process for the Final EIS was completed. While the agencies could not incorporate the results of this additional analysis in the comparative analysis in the Final EIS, the effects of the alternative were described in Chapter 4. This alternative was suggested by the Confederated Tribes of the Umatilla Indian Reservation. It was similar to SOS 9a (see above) with higher flow targets during the spring and summer, drawdown to natural river levels at several projects, higher spill levels at remaining projects, and reduced flood control storage space during the winter to allow for higher spring and summer flows. This alternative was designated as SOS 9d.

COMPARISON OF ALTERNATIVES:

Table 1 summarizes the environmental effects for the alternatives. Effects on each major river use are presented and the overall range of economic impact for the alternatives is shown.

Table 1 How the Strategies Would Affect River Uses

River Resources	SOS 1	SOS 2	SOS 4	SOS 5
Anadromous Fish	Moderate passage survival and adult escapement; slight differences from existing conditions	Survival rates in the middle range of all alternatives; with transport, juvenile survival is high	Survival about the same as SOS 2	Highest in-river survival for Snake River stocks; for other stocks, similar to existing conditions
Resident Fish	Variable conditions among reservoirs and species; pool fluctuations and failure to refill impact productivity	Variable conditions among reservoirs and species; pool fluctuations and failure to refill impact productivity	Best SOS for resident fish; improved productivity at storage projects	Generally poor; some reservoirs have improved conditions under SOS 5c
Wildlife	Resources largely unchanged from current conditions; continuation of downward trends	Long-term downward trends to resources; slight impacts at John Day due to lower reservoir levels	Moderate to significant increases in wildlife habitat at Lake Pend Oreille, Libby, Hungry Horse, and Grand Coulee	Severe reductions in wildlife habitat at lower Snake and John Day projects
Power	Energy production and load shaping maximized; 0.6-1.1% rate decrease	Annual generation costs the lowest of all SOSs except SOS 1; up to 0.4% rate increase	Flows and generation needs mismatched; 1.3% rate increase	Eliminates system load shaping capability; reduces average annual energy generation; 2.5-2.8% rate increase
Flood Control	Flooding risk unchanged from current conditions	Flooding risk unchanged from current conditions; expect annual average flood damage costs are \$3.3 million	Increased risk at Bonners Ferry, the upper Columbia, and Clearwater reaches; average annual flood damage costs increase \$0.4 million over SOS 2c	Flood risk in all areas similar to SOS 2
Navigation	Normal conditions for shallow draft navigation and reduced costs for Dworshak log transport; net decrease \$0.1 million compared to SOS 2c	Shorter Dworshak log transport operating season; total annual costs for navigation is \$414.4 million	Longer Dworshak log transport operating season; net decrease \$0.2 million compared to SOS 2c	No shallow draft navigation on the lower Snake River for 7 months or permanently; net increase \$14 to \$38 million compared to SOS 2c
Irrigation, Municipal and Industrial Water Supply	Minor increase in pumping costs at Grand Coulee of \$9,000 over SOS 2c	All irrigation needs served	Minor decrease in pumping costs at Grand Coulee of \$18,400 over SOS 2c	Drawdowns at John Day and Ice Harbor require pump modifications and increase pumping costs by about \$3.3-4.5 million
Cultural Resources	Ongoing shoreline erosion and exposure at same rate as current conditions	Ongoing shoreline erosion and exposure at same rate as current conditions	High rates of shoreline erosion at storage projects; decrease in exposure due to high pools	Dramatic increase in exposure at lower Snake River projects; less shoreline erosion at these projects
Recreation	Annual benefits could increase up to \$7.9 million under SOS 1b	Annual average recreation benefit is \$315 million	Annual benefits could increase \$4.2 million	Annual benefits could decrease between \$66 and \$90 million
Water Quality	Slight decrease in water temperature but increase in total dissolved gas in lower Snake River	Similar to SOS 1 but slight increase in water temperature; decrease in total dissolved gas	Similar to SOS 2 with slightly lower dissolved gas in lower Columbia	Maximum silt concentrations; nearly all excessive dissolved gas eliminated in lower Snake

River Resources	SOS 1	SOS 2	SOS 4	SOS 5
Change in Total Annual System Costs	-\$42 to -\$80 million	\$29 million, but SOS 2c equals 0 (no action alt.)	\$81 million	\$266 to \$336 million

Table 1 (Continued)

River Resources	SOS 6	SOS 9	PA
Anadromous Fish	In-river survival for Snake River stocks varies greatly depending on assumptions	Some of the highest and lowest in-river survival depending on SOS option and stock	In-river survival for Snake River stocks similar to SOS 2; in-river for other stocks in the mid- to upper-range
Resident Fish	Impacts generally the same as SOS 5, but not as severe; conditions worse at Lower Granite and John Day	Some of the best and worst impacts of all SOSs; 9a is generally worse, 9b is good, 9c is mixed	Conditions better at Lake Roosevelt, Hungry Horse, Lower Granite, and John Day; worse at Dworshak, sturgeon improved
Wildlife	Wildlife habitat impacts similar to SOS 5; 6d limits impacts to Lower Granite	Significant impacts to John Day under 9a and 9c; 9b similar to SOS 4 with no benefit at Libby and Hungry Horse	Impacts at John Day similar to SOS 5b; stable levels allow some restoration of habitat; some impacts at Grand Coulee
Power	Generation effects similar to SOS 5; generation costs slightly more than SOS 2c; 0.3-0.9% rate increase	Hydropower generation reduced due to high spill and drawdowns; 2.5-4.0% rate increase	Increased water storage in fall and winter and increased spill mismatches flow and generation needs; 2.0% rate increase
Flood Control	Flood risk in all areas similar to SOS 2	Highest flood risk primarily in upper Columbia; average annual flood damage ranges from \$0.3 to \$0.5 million more than SOS 2c	Upper Columbia flood damages increase \$0.2 million over SOS 2c
Navigation	No shallow draft navigation on the lower Snake River or Lower Granite for 6 months; net increase \$2 to \$12 million compared to SOS 2c	No shallow draft navigation on the lower Snake for 3 or 6 months; net increase up to \$12 million compared to SOS 2c	Normal operations for navigation; shorter Dworshak log transport season; net increase \$0.1 million compared to SOS 2c
Irrigation, Municipal and Industrial Water Supply	Drawdowns at John Day and Ice Harbor require pump modifications and increase pumping costs by about \$1.4-2.6 million	Similar impacts to SOS 6 at Ice Harbor and John Day; minor increase in pumping costs at Grand Coulee up to \$34,900	Minor savings in pumping costs at Grand Coulee; \$1.5 million increase at John Day, \$4.3 million increase for M&I
Cultural Resources	Similar to SOS 5 but less dramatic	Increased shoreline erosion and exposure due to drawdown; increased bank sloughing due to flow augmentation	Little overall change from current conditions; site exposure increases at Dworshak and John Day
Recreation	Annual benefits could decrease up to \$40 million	Annual benefits could decrease \$35 to \$97 million depending on option	Annual benefits decrease by \$26 million
Water Quality	Major sediment transport similar to SOS 5; dissolved gas and water temperature similar to SOS 2	Highest impacts due to water temperature and total dissolved gas supersaturation	Similar to SOS 2 except high total dissolved gas in the lower Columbia
Changes In Total Annual System Costs *	\$78 to \$145 million	\$233 to \$400 million	\$164 million

* Includes capital expenditures to modify existing dams.

RATIONALE FOR THE DECISION:

A major issue in this decision was Snake River salmon recovery. Events, such as ESA listings and corresponding BOs have dramatically impacted FCRPS operations. Many of the system operating strategies were designed specifically to test their potential to aid the migration of juvenile salmon.

While there is no single equation or formula that can be used to weigh each of the decision factors below in order to select the best alternative that will completely satisfy the needs of all competing interests, the extensive information collected and analyzed during the SOR process has provided the decision maker with a better understanding of the complex interactions among these resources. Consequently, BPA has been able to select an operational strategy that weighs all of the competing interests and strikes the best balance under the circumstances.

The decision criteria used for selecting the System Operating Strategy are listed below, followed by a description of how each is addressed by the selected strategy. Comparisons are between the selected strategy and the No-Action alternative (SOS 2c).

The environmental effects that guided this decision are presented in detail in Chapter 4 of the Final EIS and in the numerous appendices that focus on each river use or resource. Specific details on the effects for all alternatives including the selected strategy can be found in that chapter. A synopsis of the expected change from the No-Action Alternative conditions is summarized below. It is organized around the decision criteria which represent a comprehensive view of all uses.

I. **Resource Criteria:**

a. ***Protect and preserve threatened, endangered, and sensitive species***

Salmonids: With the selected strategy, juvenile Snake River anadromous fish in-river survival falls in the middle range of all alternatives considered. The analysis of the alternatives shows that transporting juvenile fish increases their survival rates compared to in-river migration. For this strategy, in-river survival of most mid-Columbia and lower Columbia River stocks falls in the mid-to-upper range. With the selected strategy, adult production for all six stocks evaluated was in the upper range of all alternatives.

Sturgeon: The selected strategy carries out the provisions of the USFWS BO providing substantial improvement in conditions for Kootenai River white sturgeon. Flow releases will be made from Libby Reservoir during May and June to aid spawning and recruitment in the Kootenai River.

Other Species: The selected strategy requires that storage reservoirs be managed to provide specified percentages of confidence of refill to flood control elevations by April of each year, which generally coincides with the start of the reservoirs' highest productivity period for resident species. In addition, refill is targeted to occur by the end of June and minimum summer reservoir limits are applied through August. These provisions provide some protection and enhancement to other listed or sensitive species that rely on the reservoirs for their habitat, food supply or reproduction.

b. ***Provide equitable treatment of fish and wildlife***

Resident Fish: The selected strategy is in the upper range of alternatives in terms of improving resident fish habitat and production. These conditions improve slightly in Lake Roosevelt, Lower Granite Reservoir, and other lower Snake River reservoirs, but decline slightly at other projects, in particular at Dworshak reservoir. As described above, the selected strategy includes several provisions that attempt to balance the needs of resident fish with those of anadromous fish, in particular, the adoption of specific reservoir elevation limits.

Wildlife: The selected strategy would desiccate some existing wetland, riparian, backwater and pond habitats at John Day Reservoir. Population reductions will occur for waterfowl, colonial nesting birds, non-game birds, aquatic furbearers, reptiles and other wildlife species. Reductions also occur to waterfowl, colonial nesting birds, nongame birds and amphibians at Grand Coulee (Lake Roosevelt). Adverse effects to shorebirds and cobble habitat in the Hanford Reach could occur but waterfowl and colonial nesting birds would benefit.

c. Protect and enhance environmental quality

For the following resources, the selected strategy causes limited, site-specific impacts which are not very different than what has occurred with system operations in the past.

Water Quality: The selected strategy would have overall water temperatures similar to the No-Action Alternative operations. Gas saturation would exceed the standard at The Dalles for an additional 33 days but would be about average in the mid-Columbia and lower Snake Rivers. Sediment transport would be unchanged.

Earth Resources: The selected strategy would result in moderate decreases in erosion, mass wasting, sedimentation and ground-water fluctuations at Libby and Hungry Horse. Moderate increases in these effects would occur at Dworshak. There would be little to no effect at other reservoirs.

Air Quality: The selected strategy would result in low dust emissions in small concentrations for all wind speeds at Lower Granite. Air pollutant emissions from thermal power plants needed to replace lost hydroelectric generation would increase but the minimum air quality criteria for the year 2004 would be satisfied.

Aesthetics: For the selected strategy, there would be minimal increase in shoreline exposure at the run-of-river projects on the lower Snake River. Shoreline exposure at Libby, Albeni Falls, and Grand Coulee would remain relatively unchanged. Significant increase in exposure would occur at Dworshak and a decrease would occur at Hungry Horse.

d. Provide opportunities for recreation on lakes and reservoirs

With the selected strategy, overall visitation at reservoirs would decline by 6.2 percent, a \$26.4 million decrease in annual benefits (all monetary figures based on a 3 percent

discount rate). This result reflects the fact that optimal access to recreational opportunities is based on the current level of development for the system and an operation designed around that development. The selected strategy departs from the optimal operation from a recreational viewpoint. However, a broad mix of opportunities for recreation is preserved and specific operating requirements in the strategy were included to minimize the reductions that were estimated for this strategy in the Final EIS.

Significant increase in visitation is projected to occur on the Clearwater River. A slight increase would occur at Lake Pend Oreille, Lower Granite, and Hungry Horse Reservoirs. A significant decrease in visitation would result on the Kootenai River, at Dworshak, and John Day Reservoirs with slight to moderate decreases at Libby and Grand Coulee Reservoirs. All decreases in visitation occur because summer reservoir elevations are lower than what would occur under the No-Action Alternative.

e. Provide an economic, reliable, and environmentally sound power system

With the selected strategy, increased water storage in fall and winter and increased spill during spring and summer would mismatch streamflows and generation as compared to past operating strategies. The selected strategy contains higher spill amounts to benefit migrating juvenile salmon. Average annual hydropower generation would decline slightly with these higher levels of spill. Likewise, with lower winter flows and higher spring and summer flows, BPA would be faced more often with the need to purchase power during high load periods when prices are higher and have surplus power when power prices are lower. This would result in an annual generation cost increase of approximately \$126 million on average but is not expected to raise current wholesale power rates by any significant amount.

While the selected strategy would increase costs, the reliability of the power supply would remain high. The timing for power generation is adjusted to match with the needs of the listed species. Conflicts between power and fish are resolved in favor of the fish, providing equitable treatment of fish and wildlife with the other purposes for which the FCRPS is operated.

f. Provide an economic and dependable flood damage reduction and public safety system

The selected strategy would leave the risk of flooding unchanged in the lower Columbia and Snake River areas. However, with changes in winter operations at storage projects in the Upper Columbia area, the selected strategy results in a slight increase in annual flood damages, approximately \$200,000 more on average than the No-Action Alternative, but the risk of flood events is essentially unaffected.

g. Provide an adequate supply of irrigation, municipal, and industrial water

For irrigation water supply, the selected strategy would result in minor savings for

pumping costs at Grand Coulee. There are no changes in pumping costs or conditions at Ice Harbor or John Day. For municipal and industrial water supply, the selected strategy has no impact. The current level of development in irrigation and water supply facilities is preserved and access to water sources is unaffected.

h. Provide waterborne transportation capability

The selected strategy maintains current conditions for deep draft and shallow-draft navigation on the mainstem Columbia and Snake Rivers. Annual shallow-draft navigation costs are unchanged from the No-Action Alternative. With deeper, more frequent drafts for Dworshak Reservoir during the summer, the selected strategy shortens the operating season for log transport. Annual costs are estimated to be approximately \$100,000 higher on average than the No-Action Alternative.

i. Protect and preserve cultural resources

The selected strategy, as was the case with all alternatives considered in the Final EIS, continues to cause adverse impacts to cultural resources. Greater shoreline area will be exposed at Dworshak and John Day compared to the No-Action Alternative, which could be beneficial in terms of improved access for tribal members, but will make sites more visible to the public, thus increasing likelihood of vandalism, artifact theft, wind erosion, and other damaging effects.

Traditional cultural properties and resources valued by Native Americans will also continue to be affected. These resources include cemeteries, fishing and hunting areas, ceremonial grounds, sacred places, social and political meeting areas, plants and other life forms. Harmful effects to these resources involve wave and wind erosion, exposure of burials, loss of natural resource habitat, and loss of access for tribal members.

The relatively small number of sites at the reservoirs which are now listed on the National Register of Historic Places will continue to be adversely affected to varying degrees. Most of the known and potential sites have not been evaluated for National Register eligibility, so the ones listed are a small fraction of sites that could ultimately be nominated and listed.

Most cultural resources are irreplaceable, nonrenewable resources. The impacts of system operations, especially when combined with contributing factors such as recreation, housing, industry, agriculture, and transportation, could eventually destroy a large percentage of the cultural resources at the reservoirs. The cumulative effect would be the loss of heritage sites and traditional cultural resources from a river system in an entire region.

In view of these serious impacts, the selected strategy includes the adoption of BPA's commitment to enter a cooperative planning process leading to long-term protection of cultural resources (see section titled Mitigation, in the following pages).

j. Protect and enhance socioeconomic well-being

While the selected strategy attempts to protect the economic well-being of the region, there would be increased costs and reduced benefits from its implementation in some areas. Most notable is the increase in power production costs (described above). Significant increased costs or reduced benefits were estimated for recreation. Minor cost increases were found for navigation, flood control and commercial fishing. Overall, the selected strategy would result in approximately \$158 million additional annual average regional costs or benefits lost as compared to the No-Action Alternative.

From a social perspective, an estimated reduction of 4,000 jobs could occur with an annual average cost to the region of \$113 million in lost income. There would be an increase in social stress attributable to the lost employment and income, primarily focused in the lower Snake and mid-Columbia River subregions. The changes occur because of increases in grain transportation costs, lower levels of fish harvest, higher irrigation costs, higher power costs and lower level of recreation activities.

II. Institutional Criteria

a. Provide direct public access to the ongoing decision process and operating strategy governing the Columbia River system

The decision on the selected strategy benefited from the extensive public review and discussion held during the SOR. The views of and participation by citizens with an interest in river operations were sought from the outset of the process. To determine the range of issues which needed to be addressed, public meetings were held in August 1990 in 14 Columbia Basin communities. Another round of public meetings was held in September of 1994 to present the findings contained in the SOR Draft EIS and to provide opportunity for public comment.

Wide public participation in the 14 SOR work groups was solicited and a newsletter describing each stage of the process was mailed regularly to over 5000 individuals and organizations.

Public involvement influenced the process in many ways. Response to the Draft EIS

resulted in the analysis of several additional approaches to operating the system. At the urging of the State of Montana, an alternative calling for Integrated Rule Curves at Libby and Hungry Horse (SOS 4) was examined. SOS 9, which eliminates fish transportation, was analyzed at the urging of State fish agencies and Native American Tribes. SOSs 5 and 6 - Natural River Operations and Fixed Drawdown were studied at the behest of environmental organizations and others interested in anadromous fish recovery.

Appendix T of the SOR contains nearly 1000 pages of comments on the Draft EIS by members of the public and interested organizations. Each comment is accompanied by a response from the agencies. Many comments resulted in modifications and additions to the Final EIS. Each was considered in identifying the selected strategy.

The SOR also proposed to consider another decision formalizing a process for periodically updating the initial selected strategy and providing direct public access to revising the operating strategy. This process and any resulting decision are separate from the action being considered in this ROD and if pursued, will be documented with an additional ROD.

b. Create and maintain a technical database for operating decisions

The selected strategy is based on and supported by a broad range of technical information developed through the SOR process. Extensive modeling of the selected strategy was completed to determine its environmental effects and to compare these effects to those associated with other alternatives. These results provided the technical information base to support this decision and should assist in making future adjustments to these operating decisions.

III. Legal/Regulatory Criteria

a. Implement recommended near-term actions within existing authority

Near-term decisions are those for which authority currently exists, can be implemented without delay and can provide benefit immediately. Some near-term decisions may be interim or temporary measures that precede the implementation of long-term measures. The selected strategy includes operating requirements that represent near-term actions. One or more of the Federal agencies possess authority to implement all provisions of the strategy described above, thus implementation can proceed without delay and should allow for immediate benefit.

b. *Identify areas where new authority is required to implement recommended long-term actions*

The selected strategy is based on a majority of the operating provisions contained in the reasonable and prudent actions of the BOs issued by NMFS and USFWS. These actions, in total, avoid jeopardy of listed species. As such, both near-term and longer-term actions were identified. The longer-term actions may require the Federal agencies to obtain new authority to implement fully. The selected strategy recognizes the possibility of these future activities and does not constrain their authorization at some future point in time. Likewise, the selected strategy does not over reach the limits of current authority for the measures being implemented.

c. *Satisfy existing contracts*

The selected strategy does not affect, alter or conflict with the statutory or contractual obligations previously made by the Federal agencies. The decisions on operating requirements under the selected strategy will constrain power operations for all BPA power transactions. However, BPA will serve its contractual obligations and market power and services with available resources consistent with the operating constraints that apply to each resource.

d. *Comply with environmental laws and regulations*

The decision on the selected strategy was made as a result of extensive environmental analysis and a comparison of effects among a wide range of proposed alternatives. The effects of the strategy were evaluated in context of existing environmental laws and regulations. It does not violate any such laws and satisfies the requirements of the laws directly affected by the decision. For example, the strategy reflects the results of consultation required by the Endangered Species Act. Likewise, mitigation commitments are being made for cultural resource protection and preservation according to the National Historic Preservation Act.

e. *Secure Native American treaty rights and obligations regarding natural and cultural resources*

To the extent that the selected strategy provides for effective protection and mitigation of natural and cultural resources, then it may help secure and protect Native American treaty and executive order rights and meet agency trust obligations. The selected strategy includes operating requirements designed to protect listed salmon species as identified by NMFS, to protect other listed species according to the opinion of the USFWS, and to improve the quality of other natural resources through reservoir operation and management of natural streamflows. However, affected Tribes and members of the Cultural Resources Work Group have reported that the selected strategy, like all other alternatives examined in detail in the Final EIS, will not prevent the overall decline of resources associated with Native American cultural traditions.

Habitat for some important species may be eliminated, cultural sites may be lost, and access to important places or resources will be further reduced. BPA is committed to work with affected Tribes to develop and implement long-term agreements addressing the impacts to cultural resources and to continue mitigation efforts under the Fish and Wildlife Program (see Mitigation, following pages).

Summary

In summary, the selected strategy represents a balance among many conflicting and competing resources. As noted at the outset, the rationale for the decision is based on a comprehensive, yet balanced review of all of these important resources. To emphasize one river use or need would invariably impact other resources. The analysis process conducted during the SOR involved repeated attempts to combine the various individual requirements of river resources to find a mix that provided the most benefit with the least harm. In every instance, each of the proposed alternatives would have a negative impact on at least one resource. In the end, the needs of listed anadromous fish became a major factor for selecting the preferred strategy. The operating requirements of the selected strategy were tempered by the level of impact imposed on other resources. By examining the analysis results carefully and by considering the extensive public comment, the requirements were tempered to reduce but not eliminate the level of impact to these other resources. Establishment of minimum summer reservoir levels, thereby reducing the amount of flow that could be provided to salmon, recognized the needs of resident fish in the reservoirs and attempted to provide adequate, yet not ideal, conditions for recreation. Other such examples could be cited. In the final outcome, the selected strategy is an attempt to improve conditions for salmon and do as little harm as possible to all other river resources.

ENVIRONMENTALLY PREFERABLE ALTERNATIVES:

The selected strategy for SOR is based on the BOs issued in March 1995 by NMFS and the USFWS. Since environmental protection for anadromous fish and other listed species became the focus of this analysis, the selected strategy is an environmentally preferable alternative. It favors ESA-listed species as a matter of compliance with law and policy.

The selected strategy is focused on the protection of anadromous fish at the expense of other species, primarily resident fish and wildlife. It is possible to design additional environmentally preferable alternatives by choosing different combinations of operating measures that reflect other tradeoffs among river uses and resources. For example, a second environmentally preferable alternative could be designed which would contain elements from several SOSs considered in the Final EIS.

The stabilization of pool elevations at the Libby and Hungry Horse Reservoirs as specified in SOS 4c would improve conditions for resident fish without large decreases in downstream flows lower in the basin. Historic operations or nearer to full pool elevations at the John Day Reservoir (instead of minimum irrigation levels, as called for

in the selected strategy) would preserve extensive and important wildlife habitat. Less drafting during the fall and winter at Lake Pend Oreille would provide improved resident fish spawning and habitat. Different management of reservoir elevations during the spring and summer at Grand Coulee and Dworshak would provide water retention time improvements and possibly reduce resident fish entrainment.

These reservoir elevation requirements combined with the flows, spills and other requirements directed toward ESA-listed species in the selected strategy would form this second environmentally preferable alternative.

MITIGATION:

Through the analysis process, numerous monitoring and mitigation measures for the various alternatives were identified. These mitigation and monitoring ideas, which are included in the EIS technical appendices, offer practical means to avoid or minimize environmental harm from the selected strategy. Many of the suggestions are appropriate for consideration when implementing the selected strategy. BPA is committed to mitigation for anadromous fish, resident fish, wildlife and water quality as part of the implementation of the Northwest Power Planning Council's (Council) Fish and Wildlife Program and the provisions contained in the BOs. The lead agencies have made a separate but similar commitment toward cultural resource mitigation. Mitigation measures are categorized below by the individual river resources.

Fish and Wildlife: Anadromous Fish

Improving conditions for anadromous fish is the primary objective of the selected system operation strategy. This action by itself is a monumental mitigation action. In addition to these operational requirements in the selected strategy, there are a number of non-operational mitigation measures BPA implements that benefit anadromous fish, resident fish, and wildlife. BPA will fund additional mitigation as part of the reasonable and prudent alternatives in the NMFS and USFWS BOs, as well as continue to be the primary implementor of the Council's Columbia River Basin Fish and Wildlife Program (1994) (incorporated herein by this reference). Activities affecting hatcheries and fish habitat will be pursued, both of which affect the life cycle of anadromous fish (see the Council's Program, Sections 2 through 9). Specific actions are identified in the program and prioritized each year through a process developed by the Council in cooperation with Federal, state and tribal fish and wildlife agencies. BPA will fulfill these responsibilities through its implementation of the fish and wildlife budget plan made by the Northwest Congressional delegation and the Administration (see letter of October 24, 1995 from Alice Rivlin, Director of the Office of Management and Budget, to Senator Mark Hatfield (incorporated herein by this reference)). A memorandum of agreement that implements the fish and wildlife budget plan has been negotiated among BPA, NMFS, the USFWS, Reclamation, Corps, and the Council in consultation with Northwest Indian Tribes. Even without this memorandum of agreement, BPA would continue to implement measures to protect, mitigate, and enhance fish and wildlife affected by the FCRPS in a manner consistent with the Council's Program, and

meet its responsibilities to avoid jeopardy and aid in the recovery of species listed under the ESA.

Resident Fish

Numerous mitigation ideas surfaced during the environmental analysis to protect and mitigate resident fish in the various reservoirs and river reaches in the system. See Appendix K of the Final EIS for the complete list of ideas. As with anadromous fish, mitigation actions for resident fish are included as a part of the Council's Fish and Wildlife Program and are recommended through the program prioritization process described above under Anadromous Fish. Representatives working in that process would be well served to examine the suggestions contained in Appendix K as they identify and prioritize new mitigation actions. BPA is committed to fund measures consistent with those contained in the Council's Program, Section 10, to the extent funds are available and BPA has the authority and responsibility to implement them. In addition, the Federal agencies will implement the operating provisions of the BO issued by the USFWS directed at Kootenai River White Sturgeon.

Wildlife

The analysis in the Final EIS identified several mitigation options to enhance wildlife including land purchases, development of additional habitats to replace affected habitats in adjacent or other locations, development of springs, artificial cover, perennial grass seedings, and habitat restoration using irrigation seepage. Nine proposals for monitoring effects of system operations on wildlife were also presented in Appendix N of the Final EIS. Again, BPA is committed to fund these measures consistent with the Council's Program, Section 11, to the extent funds are available and BPA has the authority and responsibility to implement them. As with resident fish, representatives in the Council's prioritization process would benefit from reviewing the suggestions in the appendix and incorporating them in the priority setting process. All of these activities are designed to protect and mitigate wildlife and associated habitat affected by system operation.

Water Quality

Mitigation suggestions for water quality concerns were identified in Appendix M of the Final EIS. They fell into three basic categories - water temperature control, gas supersaturation and sediment transport. The selected strategy incorporates operating requirements to manage gas supersaturation. Target flow levels are specified for the mainstem projects. They are combined with specific project-by-project spill percentages that are based on the potential for gas generation of each project. These spill percentages also optimize fish passage at the projects and help manage the number of fish that are transported. In addition, the Corps has as a part of its capital improvements at the projects, plans to install flow deflectors or flip lips to reduce gas supersaturation. These types of construction modifications are considered on an annual basis and fall outside of the operational decision being made here. An overall

gas abatement study is also being pursued to further investigate the problem of dissolved gas and suggest additional construction or operational fixes. BPA will support continued monitoring of water quality parameters and additional actions that arise through the prioritization processes for the Fish and Wildlife Program.

Power

The power analysis assumes that energy and capacity losses associated with the selected strategy would be replaced through acquisition of new resources such as combustion turbines or purchase of power on the spot market. Either of these responses would, in effect, mitigate losses to generation or appropriately match electrical generation with loads. Any generation resource acquisition would be evaluated under the provisions of NEPA before being pursued, separate from this EIS and associated ROD.

Cultural Resources

BPA, the Corps, and Reclamation recognize their responsibility to comply with historic and cultural preservation laws and have committed to a long-term compliance and management effort to address the impacts of the selected operating strategy.

The Final EIS found that operations have adversely affected and will continue to threaten sites along the system which are currently listed on the National Register of Historic Places. In addition, there are potentially large numbers of sites which are unknown or unrecorded, and very few of the known, recorded sites have yet been evaluated to determine National Register eligibility.

Tribal representatives testified that cultural properties, places, and resources which are irreplaceable and of inestimable value in the traditional life of Native Americans have been damaged or lost, or will be threatened by continued operations. Several Tribes also made known their strong desire that the affected places and resources be managed in ways consistent with traditional life.

BPA, the Corps, and Reclamation are committed to working closely with affected Tribes through each phase of this effort. The Tribes are invited to take part in developing

cooperative working processes. BPA will implement these processes, including formal consultation when appropriate, in a manner consistent with the BPA Tribal Policy.

BPA is committed to fund this effort over the long term, beginning in Fiscal Year 1997, with Reclamation and the Corps each providing a share of the funds. The lead agencies are initiating a series of agreement documents. The agencies have mailed a draft Programmatic Agreement for review and comment to affected Tribes, State Historic Preservation Officers, the Advisory Council on Historic Preservation, and other involved Federal agencies. The Programmatic Agreement will allow separate agreements and plans to be developed for individual areas, reservoirs, or parties.

An Interagency Agreement will be drafted by the lead agencies and made available for comment. It will define roles and responsibilities of the lead agencies, including mechanisms for joint funding. Following the Interagency Agreement, additional agreements may be developed between the lead agencies and Tribes, and between the lead agencies and other responsible agencies, to address specific or unique reservoir, affected area, or affected party concerns.

The lead agencies will develop historic property management plans for reservoirs or areas where they do not now exist, or will modify existing plans as needed, to provide for long-term management of affected resources. The agencies will prepare these management plans in full cooperation with Tribes and other involved parties. BPA intends that the individual Tribe's desired approach and preferred methods for cultural resource management will be a major consideration in the development, as well as the implementation, of each of the long-term management plans.

COMMENTS ON THE FINAL EIS

Seven letters commenting on the Final EIS were received. Some of the letters only expressed opinions or requested copies of parts of the SOR documentation. In addition, BPA along with the Corps and Reclamation have continued to coordinate with the regional entities, NMFS and USFWS and others on the system operating strategy. In evaluating the letters and comments received following completion of the Final EIS and the ongoing regional discussions, the following information or issues have been identified.

Cultural Resources

As is noted above, fluctuating water levels, associated shoreline erosion and other results have the potential to adversely affect significant cultural resources at all Federal reservoirs in the FCRPS. The National Historic Preservation Act requires Federal agencies to take into account these adverse effects and to formulate treatments to address them. In a letter, the Confederated Tribes of the Colville Reservation expressed concern regarding fulfillment of agency commitments to formulate such treatments and to carry out cultural resource management activities in cooperation with the Tribes.

As is stated in the Mitigation section of this ROD, BPA, Reclamation and the Corps are currently in the process of cooperatively preparing and consummating a Programmatic Agreement with the President's Advisory Council on Historic Preservation, the involved State Historic Preservation Officers, other affected agencies, and Federally recognized Tribes in the Columbia River Basin.

Pursuant to the Programmatic Agreement, historic preservation management plans will be developed which will identify significant cultural resources, the approaches to resource protection, preservation and treatment, the framework for research designs for data recovery where data recovery is the preferred treatment, plans for site monitoring, plans for public education and interpretation of cultural materials, and plans for the long-term curation of recovered artifacts and information. These plans will be developed in full cooperation with affected Tribes and other involved parties, and will also address issues required by other relevant legislation, including enforcement of the Archeological Resources Protection Act, provisions of the Native American Graves Protection and Repatriation Act, and the American Indian Religious Freedom Act.

Dissolved Gas Levels

The Environmental Protection Agency (EPA) in their letter commented that a fish passage spill program, operated in accordance with the total dissolved gas (TDG) variance requested by NMFS, benefits salmon recovery. However, EPA contends that any violation of the TDG standard represents an increment of biological risk to salmonids and that a long-term solution to minimize elevated TDG levels from spill operations is warranted. EPA further stated that if consideration is given to a change in the TDG standard for the Columbia and Snake Rivers, it would constitute a site-specific standard which is a formal change to state water quality standards. Such a decision to adopt a site-specific standard would need to be developed based on a scientifically credible and defensible basis, and submitted to EPA for approval after public participation and formal adoption by the state or tribe.

As part of real-time operations and the Technical Management Team (TMT) process, the Corps monitors dissolved gas levels above and below each of its mainstream Columbia and Snake Rivers projects. Starting in 1996, the Corps developed procedures that would allow a quicker response time for maintenance and repair purposes in the event of high gas levels. Quality control measures have been developed and implemented to ensure timeliness, consistency and reliability of the monitoring. Based on the real-time field data, changes to spill and other reservoir operations can be made quickly to prevent and/or correct excessively high dissolved gas conditions. The TMT has also recognized the need to include a Dissolved Gas Management Appendix in the Annual Water Management Plan. In the near-term, fish passage spill will be provided subject to the following conditions: 1) spill requests which would exceed state water quality standards will be coordinated with the appropriate state agencies, 2) a comprehensive monitoring and evaluation program is operational, and 3) spill at the lower Snake and Columbia River projects would not exceed criteria

identified in NMFS BO. BPA agrees with EPA that a long-term solution that minimizes elevated TDG levels is appropriate and that this long-term program needs to be coordinated with states and Tribes as appropriate.

There was also a concern with involuntary spill due to high flows or limited powerhouse capacity. The Corps, as part of the Columbia River Fish Mitigation Project, is conducting a Dissolved Gas Abatement Study, for which Phase I has been completed, to address long-term measures to reduce gas levels and their effects on salmon. Further phases are planned which may result in additional capital investments in the system in an effort to reduce gas levels as a consequence of operations.

Water Temperature

According to EPA, water temperature standards are being exceeded, and these elevated water temperatures are considered to be a primary limiting factor for fisheries restoration. EPA commented on three issues related to water temperature. First, cold water releases from Dworshak and other deep reservoirs should be considered. Second, passage of juveniles through the warm water forebays as quickly as possible is needed. Third, cooler water needs to be provided at fish ladders.

Water temperatures and the effects of cool water releases from Dworshak and other projects were addressed in the Final EIS. NMFS has considered the temperature effects of the operation required under its BO. NMFS prioritized releases of water for juveniles in the summer over releases in late summer for adults. NMFS also stated that when possible, release of cool water in August and September would be considered. The Federal operating agencies, based on our understanding of the BO and the currently available scientific uncertainty, has decided that water releases should be prioritized for juveniles and will consider releasing water from Dworshak based on the recommendations of the TMT.

As for passage through forebays with high water temperatures, the Corps is testing prototype surface bypass/collection technologies currently as identified in the NMFS BO. These systems may speed juvenile passage once fish arrive in project forebays. Evaluations of juvenile behavior are a part of the investigation of this technology.

NMFS also requested through its BO that investigation of water temperature control in adult fish ladders be conducted. The Corps has included water temperature control in its Columbia River Fish Mitigation Program. They are collecting ladder water temperature data and will evaluate various potential corrective actions.

Baseline Data and Monitoring

Finally, EPA indicated the need for collection of baseline data to assess water quality, sediment and biological effects of proposed operational measures and in particular, drawdown actions. The Corps currently monitors dissolved gas, water temperature, and turbidity at all of its mainstream Columbia and Snake River projects. Regarding the

effects of drawdown actions, the Corps has initiated a Lower Snake River Juvenile Salmon Migration Feasibility Study and NEPA documentation on drawdown alternatives of the lower Snake River projects to spillway crest and natural river levels. Included in this study will be data collection and assessment of water quality, sediment and biological effects of drawdowns.

Columbia River Treaty

Prior to implementing the 1995 Biological Opinion, the Chair of the Canadian Entity, by letter, and the Canadian Government, by diplomatic note, expressed concerns to the U.S. Entity (represented by BPA and the Corps) and the U.S. Government, respectively, on the operation of Libby Dam to provide for sturgeon spawning in the Kootenai River below Libby reservoir. Since that time, the Canadian Government has sent additional diplomatic notes to the U.S. Government on the operation of Libby for sturgeon again expressing their concern over the effects of the operation on downstream power generation in Canada and their belief that the operation of Libby for Kootenai River White Sturgeon under the ESA is inconsistent with the Columbia River Treaty. At the present time, the matter is under consideration by the U.S. Department of State.

CONCLUSION

The agencies have decided to pursue a specific system operating strategy that considers all river uses and resources and is based on a detailed evaluation of the potential impacts on these uses and resources. But, operation of the FCRPS is dynamic as is the understanding of that operation and the effect it has on the environment. For this reason, the agencies support the concept of adaptive management.

As applied to the FCRPS, adaptive management allows river managers to learn from actual experience and to adapt the resulting operating principles or actions to what works, whether designed to enhance a new resource or to preserve an existing one. Operations will be reviewed and monitored as often as necessary to determine if actions are performing as expected. This periodic review will permit course corrections to be put in place to make full use of new information resulting from monitoring, research studies, or other sources. Even though the agencies have decided on a selected strategy that is comprised of specific operating requirements, the agencies embrace the concept of adaptive management.

It is likely that in the future new operating strategies will be developed which rely on the experience gained through the implementation of this initial decision. The agencies are committed to operating the FCRPS in a manner that provides for public benefit, takes into account significant natural and cultural resources, and is flexible to respond to changing conditions and increasing knowledge.

Issued in Portland, Oregon on _____.

Randall W. Hardy
Administrator, Bonneville Power Administration

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APPENDIX D

HISTORY OF FEDERAL CULTURAL RESOURCE MANAGEMENT IN THE PACIFIC NORTHWEST

In the period 1997-2002, the lead Federal agencies in the Federal Columbia Power System developed a Cultural Resource Program in conjunction with affected regional Indian tribes and other cooperating agencies. Since the current participants are relatively new to the program, little is understood about the antecedents to the existing program. The historical development of a Cultural Resources Program, as it looks today, has been:

- affected by changes in Federal historic preservation policy;
- driven by Federal projects (construction & operation), and
- influenced by Federal laws and court decisions.

Increasing participation of regional Indian tribes has also had an influence. The following is a mainstream synopsis of professional activities in archaeology at the Federal reservoirs and reaches in the Columbia River basin.

The Early Years (1910-1945)

The earliest archaeological investigations in the mainstream of the Columbia River system were conducted independently by museums and universities. During this period, large private collections were amassed by early settlers and private collectors. Some of them between Walla Walla and Wenatchee became loosely organized as the Columbia River Archaeological Society. The first organized work was conducted by Harlan Smith (American Museum of Natural History) in his archaeological reconnaissance of parts of the Yakima River valley and middle Columbia in 1910. HW Krieger (U.S. National Museum) conducted a survey of the middle Columbia River in 1926-27, and recovered archaeological materials from Bonneville Dam reservoir, the first Federal dam on the lower Columbia, in 1932-33. Strong, Schenk, and Steward (1930) recorded significant archaeological sites in The Dalles-Deschutes localities of the lower Columbia. Little of this early work was inspired by Federal law until the Historic Sites Act of 1935. Then, the Federal government sponsored archaeological data recovery work under Civilian Conservation Corps or Works Progress Administration projects. In 1939-1940, the Columbia Basin Archaeological Survey (CBAS) conducted survey, testing, and excavations on lands behind Grand Coulee Dam that would be flooded by Lake Roosevelt. The investigations were conducted by many individuals, and were supported by Washington State educational institutions and museums. Results are summarized in Collier, Hudson, and Ford (1942). Petroglyphs and pictographs were recorded by various researchers in different parts of the Columbia system (Curtis 1910; Erwin 1933; Cain 1950).

The Post-World War II Period (1947-1959)

In 1947 the Smithsonian, National Park Service, and U.S. Army Corps of Engineers initiated a nationwide cooperative agreement for the survey of river basins planned for hydroelectric projects. Between 1948 and 1957, the Smithsonian set up a River Basin Surveys office at the University of Oregon in Eugene, and conducted the first professional reconnaissance level surveys in the Columbia Basin in which Federal dam reservoir areas were proposed on the Columbia and Snake rivers and their major tributaries. Key professionals associated with the Smithsonian surveys were John Campbell, Joel Shiner, and Douglas Osborne. Whereas the whole Columbia region was traversed by the Smithsonian River Basin Survey crews, efforts were centered at Chief Joseph Dam, The

Dalles Dam, and McNary Dam reservoir areas because of their imminent construction and flooding. From 1952 through 1957, the Smithsonian data recovery efforts were supported by state universities and museums that stored the archaeological collections resulting from salvage excavations of Federal reservoir areas behind Chief Joseph Dam, The Dalles Dam, and McNary Dam. Major studies produced as results of this cooperation include Osborne, Bryan, and Crabtree (1952), Shiner (1957), Warren Caldwell (1956), LS Cressman (1960), B. Robert Butler (1959).

The Federal dam construction activity in the lower Columbia River basin also attracted the attention of relic collectors who, individually and collectively, flocked to known archaeological sites in the area of The Dalles reservoir with competing efforts to salvage artifacts for their own interest. The Oregon Archaeological Society, based in Portland, Oregon, is a well-known example of an amateur group that developed during this time period. The artifact collector's view of the pre-dam time period is captured in N.G. Seaman's (1946) "Indian Relics of the Pacific Northwest," or Emory Strong's (1959) "Stone Age on the Columbia River."

The Emergence of Federal Contract Archaeology (1960-1974)

During this period, new Federal legislation forged the practice of contemporary American archaeology. In 1960 Congress passed the Reservoir Salvage Act. This legislation gave the National Park Service a lead role in coordinating national archaeological salvage efforts. Three regional offices took charge of funding archaeology. In the West, it was Paul JF Schumacher with the Western Regional Office of the National Park Service in San Francisco, California, who implemented Federal archaeological research in seven western states. This was toward the end of the era of large-scale Federal hydroelectric dam construction in the west, and it afforded significant opportunities for archaeology. In the Columbia Basin, the National Park Service contracted with the University of Oregon and David L. Cole for archaeological surveys and salvage of the John Day reservoir area; with Washington State University and Richard Daugherty for similar studies at the Snake River reservoirs from Pasco, Washington, to Lewiston, Idaho; and Washington State University and the University of Idaho for survey and excavations at Lake Roosevelt.

During this period many of today's senior American archaeologists were trained, and it was typical for graduate students in archaeology to develop thesis topics using these opportunities for research. Most substantive technical reporting was in the form of master's theses, doctoral dissertations, or papers delivered at professional conferences. For the first time, archaeologists began consulting with Indian tribes regarding the removal of ancestral graves from reservoir areas. Relocations and reburial of Indian graves were conducted at nearly every Federal reservoir during this period. In 1966 the National Historic Preservation Act was passed, creating an Advisory Council on Historic Preservation, a National Register of Historic Places, and the State Historic Preservation Offices. The Section 106 process became formulated, but was not widely applied to archaeological resources until after 1974.

During these years, competing efforts of relic collectors intensified within the planned reservoir areas on the Columbia and Snake rivers, especially at John Day reservoir, just as it did a decade earlier in The Dalles reservoir. An unusual compromise was reached in 1967 by the National Park Service with the Mid-Columbia Archaeological Society, Richland, Washington. Archaeological work was conducted cooperatively at sites in McNary and John Day reservoirs, along with the first reconnaissance of the Hanford

Reach in cooperation with Washington State University and the University of Idaho. Elsewhere in the Columbia Basin, sites continued to be vandalized by local and regional relic collectors and pillaged by government contractors involved in dam construction and reservoir clearing activities. No law enforcement to protect archaeological sites was provided by Federal agencies during this period, but many local and state-based ordinances were established.

The Federal Archaeology Program (1974 to 1990)

Passage of the Archaeological and Historic Preservation Act of 1974 (also known as Moss-Bennett) authorized Federal agencies to fund archaeological surveys, excavations, and other related investigations. Prior to this time the only significant Federal funding for archaeology was through the National Park Service, Smithsonian, or under the Highway Salvage Act of 1956. This new act created the Federal Archaeology Program and gave the National Park Service the lead for establishing standards for education, training, and overall program management and execution. Most Federal land management and water development agencies began hiring archaeologists, and this gave rise to a new field of training and study called "Cultural Resource Management (CRM)." This refers to the ways and means by which Federal agencies achieve compliance with the National Historic Preservation Act and related statutes, executive orders, and regulations. Since 1974 Federal agencies have hired staff archaeologists and participated in the Federal Archaeology Program. This thrust became the means for incorporating archaeological interests into the Section 106 process of NHPA. Investigations during this period included extensive survey, test excavation, and data recovery efforts at Lake Roosevelt and Chief Joseph, triggered by construction of the Third Power plant at Grand Coulee Dam. At Lake Roosevelt, most investigations focused in the Kettle Falls vicinity (see various reports by David Chance or Chance and Chance). Chief Joseph investigations were conducted in areas affected by the reservoir's reregulation to accommodate the increased releases through Grand Coulee.

The FCRPS Historic Properties Management Program (1990 and on-going)

In the late 1980s, BPA completed environmental analysis of the effects of proposed changes in power generation and marketing strategies, the Intertie Development and Use study. The analysis showed that operations for power generation were damaging historic properties, and that lack of management of affected historic properties posed a vulnerability to the power marketing program's efficiency. Therefore, on July 31, 1991, interested parties signed a Programmatic Agreement (the IDU PA) to address the effects of power operations on historic properties at the five storage reservoirs in the FCRPS system (Dworshak, Libby, Albeni Falls, Hungry Horse, and Grand Coulee). Signatories to the IDU PA were:

- Bonneville Power Administration
- Bureau of Reclamation, Pacific Northwest Region
- U.S. Army Corps of Engineers, Pacific Northwest Region
- National Park Service, Pacific Northwest Region
- U.S. Forest Service, Region 1
- Idaho, Montana, and Washington State Historic Preservation Officers
- Confederated Tribes of the Colville Reservation
- Spokane Tribe of Indians

- Advisory Council on Historic Preservation

Principal commitments in the IDU PA were to:

- Address the impacts of hydropower operations on historic properties within or immediately adjacent to reservoir drawdown zones at the five system storage reservoirs.
- Complete "intensive surveys of historic properties and properties possessing traditional cultural value;" complete site evaluation; use "accepted archaeological practices" as defined in 36 CFR 800, Section 100 Guidelines, Secretary of the Interior's Standards and Guidelines; and 36 CFR 63.
- Complete "action plans" for each affected area once intensive surveys were completed (the agreement includes action plan contents and gives the agencies 18 months to complete after intensive surveys are performed).
- Establish professional requirements for supervisory personnel.

As a result of the IDU PA, BPA was able to provide funds at an effective level to address historic properties compliance work at the five FCRPS reservoirs. IDU-funded investigations focused on archeological survey of drawdown zones and evaluative testing of archeological sites. Intensive systematic archeological surveys were completed at Hungry Horse Reservoir, and test excavations began to evaluate the historic significance of recorded sites. This was the first complete survey of the Hungry Horse pool. At Grand Coulee/Lake Roosevelt, efforts focused on archeological survey, including lands examined during Chance's work in the 1970s and lands that had not been systematically surveyed in the past. At USACE reservoirs (Libby, Albeni Falls, Dworshak) various inventories, evaluation, treatment and paleoenvironmental studies were initiated under the IDU PA funding.

In 1995, the three agencies—BPA, USACE, and Reclamation—completed a comprehensive technical and environmental impact analysis of the FCRPS. This study, commonly called the System Operation Review or SOR, analyzed the impacts of all authorized operations, rather than just the power operations as assessed in the IDU. In the Records of Decision for the SOR EIS, the agencies committed to address the effects of multi-purpose operations on historic properties at all 14 FCRPS reservoirs. They agreed to devote about \$4.5 million annually for a 15 year period, and then provide funding thereafter after assessing needs for further impact management activities. The funding is apportioned as \$3,000,000 for the 12 USACE reservoirs and \$1,428,000 for the two Reclamation reservoirs. The proportion of funding provided by each agency at the reservoirs is formalized in a Direct Funding Agreement (DFA) between BPA and Reclamation, and another between BPA and USACE (details below). Under the DFAs, BPA provides power revenues to the program to cover the power-generating joint costs and the agencies provide Congressionally-appropriated funding to cover the joint non-power portion of the operating cost at each reservoir. By mutual agreement, BPA serves as the contracting agency for work at Reclamation's reservoirs, and the USACE is the contracting agency for work at USACE reservoirs. As part of the program implemented after the SOR, the agencies also initiated a planning and implementation process that involves Cooperating Groups, and expanded the focus of investigations to incorporate traditional cultural properties, law enforcement, and public education. In essence, the FCRPS Historic Property Management Program ultimately grew from the commitments in the SOR Records of Decision.

TIMELINE OF SIGNIFICANT EVENTS

Date	Event
1906	Antiquities Act
1933	Grand Coulee Dam construction begins*
1934	Bonneville Dam construction begins
1935	Historic Sites Act
1938	Bonneville Dam begins operations
1942	Grand Coulee Dam begins operation
1947	McNary Dam construction begins
1948	Hungry Horse Dam construction begins
1949	Chief Joseph Dam construction begins
1947-1948	River Basin Surveys along the Columbia and Snake Rivers
1952	McNary Dam begins operations
1952	The Dalles Dam construction begins
1953	Hungry Horse Dam begins operation
1955	Ice Harbor Dam construction begins
1957	The Dalles Dam begins operation
1958	John Day Dam construction begins
1958	Chief Joseph Dam begins operation
1960	Reservoir Salvage Act
1961	Lower Monumental Dam construction begins
1962	Ice Harbor Dam begins operation
1963	Little Goose Dam construction begins
1965	Lower Granite Dam construction begins
1966	National Historic Preservation Act
1966	Dworshak Dam construction begins
1966	Libby Dam construction begins
1969	National Environmental Policy Act
1969	Lower Monumental Dam begins operations
1970	Little Goose Dam begins operations
1971	John Day Dam begins operations
1973	Dworshak Dam begins operations
1974	Archaeological and Historic Preservation Act
1975	Lower Granite Dam begins operations
1975	Libby Dam begins operations
1979	Archaeological Resources Protection Act
1990	Native American Graves Protection and Repatriation Act
1990	System Operation Review (SOR) begins
1991	Intertie Development and Use (IDU) Programmatic Agreement Regarding Federal Columbia River Power System Hydroelectric Operations for 5 storage dams

Date	Event
1992	National Energy Policy Act
1995	Energy and Water Development Appropriations Act
1996	Memorandum of Agreement between BPA and BR for Direct Funding Power Operations and Maintenance Costs at Reclamation Projects
1996	BPA, COE & BR Commitment to Fund FCRPS Cultural Resources Program
1996-1997	Government to Government Meetings with Columbia River Tribes
1997	Memorandum of Agreement between BPA and COE for Direct Funding Power Operations and Maintenance Costs at Corps Projects
1997	SOR Records of Decision signed
1997	FCRPS Cultural Resources Reservoir Cooperating Groups Created
1997-1998	Letter of Agreement between BPA/Reclamation and BPA/COE for Direct Funding Cultural Properties Management Costs
2002	BPA, BR, COE Historic Properties Management Program Self-Assessment Process Begins
2004	Cultural Resources Subcommittee of the FCRPS Joint Operating Committee Chartered

- Bold print indicates significant events in cultural resources program

Appendix E

O&M Direct Funding Agreements between
BPA/Reclamation
And
BPA/USACE

AUTHENTICATED

Bonneville Contract No. 96MS-95129
Reclamation Contract No. 1425-6-AA-10-01150
12/06/96

MEMORANDUM OF AGREEMENT
executed by the
UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
acting by and through the
BONNEVILLE POWER ADMINISTRATION
and the
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
acting by and through the
BUREAU OF RECLAMATION
(Direct Funding of Power
Operations and Maintenance Costs
at Reclamation Projects)

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This MEMORANDUM OF AGREEMENT (Agreement), executed [December 6](#), 19 [96](#), between the BONNEVILLE POWER ADMINISTRATION (Bonneville), acting by and through the Administrator of Bonneville, and the Secretary of the Department of the Interior, acting by and through the BUREAU OF RECLAMATION (Reclamation), each sometimes hereinafter referred to individually as “Party” and jointly as “Parties.”

W I T N E S S E T H :

WHEREAS Reclamation operates and maintains hydroelectric power generation facilities in the Pacific Northwest, and Bonneville markets and transmits the hydropower output which is surplus to Reclamation project requirements; and

WHEREAS a portion of Reclamation’s budget will continue to be provided through appropriations by the U.S. Congress; and

WHEREAS Bonneville currently makes U.S. Treasury payments equal to Reclamation’s annual operations and maintenance (O&M) Power Costs allocated to power, and such O&M Power Costs include interest on, and amortization of Reclamation’s capital investments allocated to power in the Pacific Northwest; and

WHEREAS under this Agreement, Bonneville will directly fund annual O&M Power Costs pursuant to the terms and conditions contained herein; and

WHEREAS Reclamation and Bonneville are seeking to establish procedures whereby the O&M Power Costs are reliably and adequately funded in a manner that is mutually beneficial to both Parties; and

WHEREAS for the purposes of this Agreement, Reclamation's Five-Year Power Budgets and Annual Power Budgets are based on obligations that assume 100 percent accrued expenditures; and

WHEREAS Reclamation has the authority to incur obligations to the extent reflected in this Agreement; and

WHEREAS this Agreement is entered into pursuant to the authority contained in the Energy Policy Act of 1992, Public Law 102-486, Section 2406; and

WHEREAS the Secretary of Interior retains the right and authority to interpret and implement Reclamation law and any other statutory authority vested in the Secretary as to its application to Reclamation Project facilities; and

WHEREAS Bonneville is authorized pursuant to law to market electric power and energy generated at various Federal hydroelectric projects in the Pacific Northwest or acquired from other resources, to construct and operate transmission facilities, to provide transmission and other services, and to enter into agreements to carry out such authority;

NOW, THEREFORE, the Parties hereto mutually agree as follows:

1. TERM, TERMINATION, AND EXTENSION

(a) Term of Agreement

This Agreement, when executed by the Parties, shall be in effect at 2400 hours on September 30, 1996 (Effective Date) and shall continue in effect until 2400 hours on September 30, 2006, unless terminated earlier as provided in section 1(b), or extended as provided for in section 1(c). The Parties understand and agree that, although the date of execution of this Agreement is subsequent to the Effective Date, all terms and conditions of this Agreement become effective on the Effective Date. All liabilities incurred hereunder are preserved until satisfied.

(b) **Termination of Agreement**

(1) **Unilateral Termination Right by Either Party**

Either Party may terminate this Agreement upon written notice to the other Party; **provided, however**, that any such written notice shall specify a termination date that is at least 2 Fiscal Years subsequent to the date shown on the notice.

(2) **Termination Option Following Third-Year Review**

Within 180 days following the end of the third Fiscal Year of this Agreement, the JOC shall compile information, prepare, and submit a report to the Bonneville Administrator and the Reclamation Pacific Northwest Regional Director. Such report shall provide an in-depth analysis of the cost effectiveness and efficacy of performance under this Agreement. Such report shall be provided to the Office of Management and Budget. If, within 30 days following receipt of such report, either Bonneville or Reclamation determines that this Agreement is not achieving the benefits anticipated, then Bonneville or Reclamation may provide notice to terminate this Agreement in accordance with section 1(b)(1).

(c) **Extension of Agreement**

During the Fiscal Year that begins October 1, 2000, the Parties may, if mutually agreeable, extend the term of this Agreement by an additional 5 Fiscal Years, until September 30, 2011 (a ten year term). In this event, the Parties shall prepare and execute an amendment to this Agreement to accomplish such extension. The term of this agreement may be extended in 5 year increments past the year 2011. Notice of such extensions shall be given by the end of the fifth Fiscal Year, of any subsequent ten year term.

2. DEFINITIONS

- (a) “Annual Power Budget” means an annual budget prepared by Reclamation that specifies O&M Power Costs categorized by major line items for each Project for the upcoming Fiscal Year. The Annual Power Budget shall include a separate line item that specifies the amount of the Performance Incentives. Reclamation shall separately identify the power portion of any items that are multipurpose that Reclamation will seek an appropriation for, and which Bonneville is expected to reimburse the power portion of these items to Treasury at the end of each Fiscal Year. Each Annual Power Budget shall be attached hereto as Exhibit B.
- (b) “Authorized Representative” means one representative appointed by Bonneville and one representative appointed by Reclamation that serve as lead representatives on the Joint Operating Committee.
- (c) “Fiscal Year” means each year that begins on October 1 and ends on the following September 30; **provided, however**, that the initial Fiscal Year shall begin on the Effective Date and terminate on September 30, 1997.
- (d) “Five-Year Power Budget” means the maximum estimated amounts of the Annual Power Budgets for five consecutive Fiscal Years that Bonneville will directly fund under this Agreement. Reclamation shall separately identify the power portion of any items that are multipurpose that Reclamation will seek an appropriation for, and which Bonneville is expected to reimburse the power portion of these items to Treasury at the end of each Fiscal Year. Each Five-Year Power Budget shall be attached hereto as Exhibit A.
- (e) “Generation Additions, Improvements, and Replacements” means the design and construction of capital additions, improvements, or replacements that are funded under this Agreement and are included in each Five-Year Power Budget.

- (f) “Joint Operating Committee” or “JOC” means a committee comprised of the Authorized Representatives and other participants appointed by such Authorized Representatives.
- (g) “O&M Power Costs” means, for activities performed at Reclamation Projects, (1) power operations and maintenance expense costs incurred by Reclamation, which include direct power costs and joint power cost allocations, (2) the cost of O&M Power Equipment, and (3) the cost of design and construction of Generation Additions, Improvements, and Replacements.
- (h) “O&M Power Equipment” means various items that include tools and electrical and mechanical equipment (unit breakers, excitation equipment, relays, etc.) that are necessary for day-to-day power operations and maintenance at Reclamation Projects.
- (i) “Performance Incentives” means, for each Annual Power Budget, an amount of money available to Reclamation if Reclamation successfully achieves the Performance Indicators for each such Annual Power Budget.
- (j) “Performance Indicators” means specific operational or budgetary indicators established by the JOC for each Fiscal Year, which shall consider the historical operations and prospective operations at Reclamation Projects, based on the amount of water expected to be available for power generation. Performance Indicators may include, but shall not be limited to, the number of units to be available at particular times of the year, the number of forced outages acceptable within particular times of the year, and the accomplishment of specific activities. Performance Indicators shall be attached hereto as Exhibit C.
- (k) “Reclamation Project” means each of Reclamation’s facilities associated with hydroelectric power generation facilities, either new or existing, located in the Pacific Northwest.

3. EXHIBITS; INTERPRETATION

Five-Year Power Budget (Exhibit A), Annual Power Budget (Exhibit B), and Performance Indicators and Performance Incentives (Exhibit C) are attached hereto and hereby made a part of this Agreement. If there is a conflict between the body of this Agreement and the exhibits attached hereto, then the body of this Agreement shall prevail.

4. FIVE-YEAR POWER BUDGET

(a) Initial Five-Year Power Budget

The initial Five-Year Power Budget shall become effective at 2400 hours on September 30, 1996, and shall be attached hereto as Exhibit A prior to or at the time this Agreement is executed by the Parties.

(b) Subsequent Five-Year Power Budgets

No later than June 15 of the fourth Fiscal Year during a Five-Year Power Budget, Reclamation shall prepare and submit to Bonneville a revised Five-Year Power Budget to become effective at 2400 hours on September 30 of the fifth Fiscal Year. The June 15 submittal shall be coordinated with Bonneville's annual budget call letter. Any subsequent Five-Year Power Budget shall not become effective unless approved by Bonneville. If Bonneville does not approve a Five-Year Power Budget, Bonneville shall provide written notice to Reclamation, stating its reasons for doing so. The Parties shall then use reasonable efforts to agree on a Five-Year Power Budget. Following agreement by the Parties, the Parties shall prepare and execute a revision to Exhibit A for the subsequent 5-year period.

(c) Revision of a Five-Year Power Budget Prior to its Expiration

Any proposed revision to a Five-Year Power Budget shall not become effective prior to its expiration unless approved by Bonneville. If Bonneville does not approve a proposed revision to a Five-Year Power Budget, Bonneville shall provide written notice to Reclamation, stating the reasons for doing so. Following agreement by the Parties, the Parties shall prepare and execute a

revision to Exhibit A for the remaining period of such revised Five-Year Power Budget.

- (d) If the Parties cannot agree to a new Five-Year Power Budget prior to expiration of the existing Five-Year Power Budget then this Agreement shall be extended in 1-year increments. Each subsequent year's Annual Power Budget shall be equal to the most recently executed Annual Power Budget, including budgets for any deferrals, undelivered orders, or savings in accordance with section 9, for operating Reclamation Projects covered by the then-current Annual Power Budget until a new Five-Year Power Budget is agreed to or established in accordance with section 10 of this Agreement.

5. ANNUAL POWER BUDGET

- (a) **Initial Annual Power Budget**

The initial Annual Power Budget shall become effective at 2400 hours on September 30, 1996, and shall be attached hereto as Exhibit B prior to or at the time this Agreement is executed by the Parties.

- (b) **Subsequent Annual Power Budgets**

No later than June 15 of each Fiscal Year, the JOC shall meet to review and approve any revisions to the next year's Annual Power Budget to become effective at 2400 hours on the following September 30. Each Annual Power Budget shall be consistent with the total amount of the Five-Year Power Budget, unless otherwise agreed to by the JOC. The Authorized Representatives shall prepare and execute a revised Exhibit B for the next Fiscal Year. Each June 15 submittal shall be coordinated with Bonneville's annual budget call letter.

- (c) **Revision of Annual Power Budget**

An Annual Power Budget shall not be revised prior to its expiration unless approved by the JOC. If approved by the JOC, the Authorized

Representatives shall prepare and execute a revision to Exhibit B for the remaining period of the Fiscal Year.

6. PERFORMANCE INDICATORS AND PERFORMANCE INCENTIVES

- (a) Performance Indicators shall be used to establish a basis for providing Performance Incentives to Reclamation.
- (b) **Initial Performance Indicators and Initial Performance Incentives**
The initial Performance Indicators and Performance Incentives shall become effective at 2400 hours on September 30, 1996, and shall be attached hereto as Exhibit C prior to or at the time this Agreement is executed.
- (c) **Subsequent Performance Indicators and Performance Incentives**
No later than June 15 of each Fiscal Year the JOC shall prepare a new Exhibit C to become effective on the following October 1. The Authorized Representatives shall prepare and execute a new Exhibit C for the next Fiscal Year.
- (d) If Performance Incentives are not achieved for any Fiscal Year, then unearned monies will not accumulate or be available for any subsequent Fiscal Year.

7. JOINT OPERATING COMMITTEE RESPONSIBILITIES

- (a) The JOC shall consist of members from both Parties, with consistent representation from Bonneville's Generation Supply and Accounting Operations, and from Reclamation's Facility Operation and Maintenance, Power Management, Financial Management, and representatives from the Reclamation Projects familiar with the day-to-day operations.
- (b) Each Party's Authorized Representative shall have one vote and shall be the only voting member of the JOC for that Party.

- (c) The JOC shall review Five-Year Power Budgets and shall review and approve any revisions to the Annual Power Budgets, if necessary.
- (d) The JOC will compare the actual O&M Power Costs incurred by Reclamation to the Annual Power Budget following each Fiscal Year.
- (e) The JOC will establish and review Performance Indicators and Performance Incentives, and determine if Reclamation is eligible for Performance Incentives.
- (f) If it is determined by the JOC, pursuant to section 7(d), that Reclamation is eligible for Performance Incentives, then the JOC shall determine the amount of and approve such Performance Incentives following the end of each Fiscal Year.
- (g) The JOC, at its discretion, may designate subgroups, as required, for technical work assignments only, and these subgroups shall not have any of the authorities of the JOC.
- (h) The JOC will serve as a forum to discuss the coordination of Reclamation's and Bonneville's O&M schedules and outage schedules.
- (i) The Reclamation Authorized Representative shall notify the Bonneville Authorized Representative as soon as possible of any unforeseen event at a Reclamation Project that may significantly impact power generation.
- (j) The Bonneville Authorized Representative shall notify the Reclamation Authorized Representative as soon as possible of any unforeseen event that may prevent the transfer of funds to Reclamation.
- (k) The JOC shall operate in a manner that is consistent with the missions, operating plans, and legal authorities of the Parties.

8. TRANSFER OF FUNDS TO RECLAMATION

- (a) Bonneville agrees to make payments to Reclamation for O&M Power Costs and any applicable Performance Incentives. Such payments shall only be made out of net proceeds as defined in 16 U.S.C. 838k(b).
- (b) Bonneville shall transfer cash to the transfer (allocation) account in the U.S. Treasury on a monthly basis or more frequently as needed, for Reclamation to achieve its disbursement requirements.
- (c) Bonneville agrees to Reclamation's use of Online Payment and Collection (OPAC) or some other mutually agreed-upon electronic transfer method for the transfer of such funds to Reclamation.
- (d) Bonneville payments to Reclamation under this Agreement will only be made for O&M Power Cost items, as detailed in this Agreement or its exhibits.
- (e) The estimated cost of a single piece of O&M Power Equipment shall not exceed \$250,000 for Grand Coulee, or \$100,000 for any other Reclamation Project. Any piece of O&M Power Equipment costing more than these amounts will not be funded under this Agreement, unless approved by the JOC.
- (f) The estimated cost of any Generation Additions, Improvements, and Replacements shall not exceed \$250,000 for Grand Coulee, or \$100,000 for any other Reclamation Project. Any Generation Additions, Improvements, and Replacements costing more than these amounts will not be funded under this Agreement, unless approved by the JOC.
- (g) For any interests, rights or obligations that Reclamation sells, assigns, or transfers in accordance with section 13 of this Agreement, the Parties shall

agree upon the associated amount of O&M Power Costs to be deleted from this Agreement.

- (h) Any O&M Power Cost items that are funded through methods other than this Agreement will not be reimbursed under this Agreement by Bonneville.

9. COMPARISON OF ACTUAL O&M POWER COSTS TO ANNUAL POWER BUDGET FOLLOWING EACH FISCAL YEAR

(a) Review by JOC

Within 90 days following the end of each Fiscal Year, Reclamation shall provide an accounting of the actual O&M Power Costs incurred to the Authorized Representatives, and the JOC shall convene to compare such actual O&M Power Costs incurred by Reclamation to the Annual Power Budget amount. Each such comparison shall exclude the amount of the Performance Incentives in the Annual Power Budget, and shall also exclude any amounts earned under section 9(b)(2) from a previous year or years.

(b) Actual O&M Power Costs Less Than Annual Power Budget

- (1) If actual O&M Power Costs were less than anticipated due to program deferrals or undelivered orders, the total amount of such deferrals or undelivered orders shall be available for use in a future Fiscal Year.
- (2) If actual O&M Power Costs were less than anticipated due to a savings that is not expected to be occurring at a future date (i.e., efficiency gains, staff reductions, or changes in maintenance practices), these savings will be shared equally between the Parties; 50 percent of the savings shall remain with Bonneville and shall not be available for use by Reclamation during any future Fiscal Year after such time that a savings has been determined. Reclamation's share of the savings shall be available for use for Reclamation Projects in a future Fiscal Year, for items described under O&M Power

Costs that are necessary for unplanned work that is not included in the Annual Power Budget, and is mutually beneficial to the Parties.

- (3) In the event that there are any amounts pursuant to section 9(b)(1) or section 9(b)(2) during a Fiscal Year, these amounts shall be available for Reclamation's use in a future Fiscal Year for O&M Power Cost items. Such amounts shall be held by Bonneville in a separate budget item, and shall be available for use by Reclamation; **provided, however,** that the total amount used during any Fiscal Year shall not exceed \$3 million, unless approved by the JOC prior to expenditure. To the extent possible, Reclamation shall either (A) provide to the JOC a revised Five-Year Power Budget that incorporates such amounts; or (B) provide the JOC with an estimate of when such amounts would be spent in a subsequent Five-Year Power Budget. Revisions to any current Five-Year Power Budget shall be made in accordance with section 4(c) of this Agreement. The cumulative amounts in this budget item shall not exceed ten million dollars (\$10 million), unless otherwise agreed to in writing by Bonneville. Amounts remaining in this budget item can be extended beyond the current Five-Year Power Budget.

(c) **Actual O&M Power Costs Greater Than Annual Power Budget**

If the actual O&M Power Costs are greater than the Annual Power Budget, then the remaining Fiscal Year(s) in the Five-Year Power Budget shall be reduced by the amount of such excess, such that the Five-Year Power Budget total remains unchanged. The Parties shall prepare and execute a revision to Exhibit A to reflect such reduced amounts.

10. DISPUTE RESOLUTION

- (a) If a dispute arises between the Parties regarding the terms, conditions, or performance of obligations under this Agreement, then the Parties shall continue performance under this Agreement pending resolution of such

dispute. Parties shall first seek to resolve any dispute by negotiations between the management of the Parties prior to giving notice of initiation of mediation under this Agreement.

- (b) Upon the written notice from either Party to the other Party, any and all disputes arising under the terms of this Agreement or out of performance under this Agreement are subject to mediation on any issue, including without limitation, issues of fact, any law relating to performance under this Agreement, and contract interpretation.
- (c) Reclamation and Bonneville shall agree upon a mediator and a set of procedures for the conduct of any mediation. In the event Reclamation and Bonneville have not agreed to a set of procedures prior to a notice of dispute under this section 10, then the mediator chosen above shall establish such procedures.
- (d) If the mediation process above does not result in a settlement, then upon written notice, either Party may propose for agreement by the other Party, arbitration on any issue, including without limitation, issues of fact, any law relating to performance under this Agreement, and contract interpretation.
- (e) Reclamation and Bonneville may agree to a set of procedures for the conduct of any arbitration under this section 10. In the event Reclamation and Bonneville do not develop a set of procedures prior to commencing arbitration of a dispute under this section 10, then the Commercial Arbitration Rules, except those pertaining to court enforcement of a decision, of the American Arbitration Association would be used for that dispute.

11. AUDITS

- (a) Each Party shall reserve the right to audit and to examine any cost, payment, settlement, or supporting documentation, including, but not limited to, audit reports resulting from any items set forth in this Agreement. Any audit(s)

shall be undertaken by either Party's representative(s) upon reasonable notice to the other Party and at reasonable times and in conformance with generally-accepted auditing standards. The right to conduct audits shall include Project sites and facilities. The Party being audited agrees to cooperate fully with any such audit(s). The right to audit a cost shall extend for a period of 3 years following the last day of the Fiscal Year in which such cost was incurred under this Agreement. The Parties agree to retain all records and documentation related to this Agreement prepared in the normal course of business for the entire length of this audit period. The Parties agree that all accounting and records shall be maintained in accordance with generally-accepted accounting principles.

- (b) The Party being audited shall be notified in writing of any exception taken as a result of an audit promptly after completion of the audit. The Party being audited shall have 30 days to review the notice of exception.

12. AGREEMENT REVISIONS

Except as otherwise expressly provided to the contrary in this Agreement, the provisions of the body of this Agreement and Exhibit A may be amended only by mutual written agreement of the Parties. Exhibits B and C may be revised following written agreement by each Party's Authorized Representative.

13. ASSIGNMENT

- (a) Rights shall not be assigned, and obligations shall not be delegated under this Agreement.
- (b) In the event of such assignment or transfer, Reclamation shall provide Bonneville with notice of the assignment or transfer, together with a true copy of the instrument of assignment or transfer not less than 10 days prior to the intended date of execution.

- (c) This Agreement shall not be to the benefit of and binding upon the respective successors and assigns of the Parties.

14. HOLD HARMLESS

(a) **Reclamation Obligation to Hold Bonneville Harmless**

Reclamation shall hold Bonneville harmless from all claims, damages, losses, liability and expenses arising from negligent or other tortious acts or omissions of Reclamation, its employees, agents, or contractors arising under this Agreement, to the extent permitted by the Federal Tort Claims Act.

(b) **Bonneville Obligation to Hold Reclamation Harmless**

Bonneville shall hold Reclamation harmless from all claims, damages, losses, liability and expenses arising from negligent or other tortious acts or omissions of Bonneville, its employees, agents, or contractors arising under this Agreement, to the extent permitted by the Federal Tort Claims Act.

15. NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries of this Agreement.

16. NOTICES

Unless the Agreement requires otherwise, any notice, demand, or request provided for in this Agreement, or served, given, or made in connection with it, shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by electronic transfer, or by acknowledged delivery, or sent by registered or certified mail, postage prepaid, to the persons specified below:

To Bonneville:	United States Department of Energy Bonneville Power Administration 905 NE. 11th Avenue (97232) P.O. Box 3621 Portland, OR 97208-3621 Attn: Manager, Federal Hydro Projects - MGC
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To Reclamation:

United States Department of the Interior
Bureau of Reclamation
1150 N. Curtis
Boise, ID 83706-1234
Attn: Regional Finance Manager - PN-1800
Program Manager, Facility O&M - PN-3200

Any Party may, by written notice to the other Parties, change the designation or address of the person so specified as the one to receive notices pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in several counterparts.

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By /S/ RANDALL W. HARDY
Administrator and
Chief Executive Officer

Name Randall W. Hardy
(Print/Type)

Date December 6, 1996

UNITED STATES OF AMERICA
Department of the Interior
Bureau of Reclamation

By /S/ ELUID L. MARTINEZ

Name Eluid L. Martinez
(Print/Type)

Title Commissioner

Date December 11, 1996

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FIVE-YEAR POWER BUDGET

Power Budget for FY 1997 (\$000)

Major Line Items	FY 1997 Base Request	Extraordinary Maintenance	Replacements and Additions	O&M Power Costs FY 1997	Appropriated Multipurpose Items
General Coordination	506			506	
Boise	2,589	30	469	3,088	140
Columbia Basin	27,705	10	2,463	30,178	500
Leavenworth Fish Hatchery	1,594			1,594	
Intertie Development	250			250	
Cultural Resource Activities					
National Historic Preservation Act Compliance	470			470	
Hungry Horse	1,893	45	112	2,050	180
Minidoka	4,402	125	2,275	6,802	40
Yakima	1,715	155	315	2,185	
FY 1997 TOTALS FOR REGION	41,124	365	5,634	47,123	860
Performance Incentive	0				

Power Budget for FY 1998 (\$000)

Major Line Items	FY 1998 Base Request	Extraordinary Maintenance	Replacements and Additions	O&M Power Costs FY 1998	Appropriated Multipurpose Items
General Coordination	521			521	
Boise	2,737	370	150	3,257	395
Columbia Basin	28,530	285	3,159	31,974	2,191
Leavenworth Fish Hatchery	1,559			1,559	
Intertie Development	350			350	
Cultural Resource Activities					
National Historic Preservation Act Compliance	470			470	
Hungry Horse	1,903	497	435	2,835	251
Minidoka	3,911	435	407	4,753	150
Yakima	1,799	300	260	2,359	
FY 1998 TOTALS FOR REGION	41,780	1,887	4,411	48,078	2,987
Performance Incentive	382				

Power Budget for FY 1999 (\$000)

Major Line Items	FY 1999 Base Request	Extraordinary Maintenance	Replacements and Additions	O&M Power Costs FY 1999	Appropriated Multipurpose Items
General Coordination	537			537	
Boise	2,820	109	410	3,339	710
Columbia Basin	29,664	80	4,403	34,147	2,958
Leavenworth Fish Hatchery	1,805			1,805	
Intertie Development	350			350	
Cultural Resource Activities					
National Historic Preservation Act Compliance					
Hungry Horse	1,734	282	130	2,146	777
Minidoka	4,094	50	395	4,539	459
Yakima	1,852	400	144	2,396	445
FY 1999 TOTALS FOR REGION	42,856	921	5,482	49,259	5,349
Performance Incentive	377				

Power Budget for FY 2000 (\$000)

Major Line Items	FY 2000 Base Request	Extraordinary Maintenance	Replacements and Additions	O&M Power Costs FY 2000	Appropriated Multipurpose Items
General Coordination	553			553	
Boise	2,900		605	3,505	770
Columbia Basin	30,625	80	3,389	34,094	4,540
Leavenworth Fish Hatchery	1,805			1,805	
Intertie Development	350			350	
Cultural Resource Activities					
National Historic Preservation Act Compliance					
Hungry Horse	1,785		517	2,302	318
Minidoka	4,150		290	4,440	80
Yakima	1,907		100	2,007	
FY 2000 TOTALS FOR REGION	44,075	80	4,901	49,056	5,708
Performance Incentive	387				

Power Budget for FY 2001 (\$000)

Major Line Items	FY 2001 Base Request	Extraordinary Maintenance	Replacements and Additions	O&M Power Costs FY 2001	Appropriated Multipurpose Items
General Coordination	570			570	
Boise	2,934	145	475	3,554	580
Columbia Basin	31,606	80	3,065	34,751	3,201
Leavenworth Fish Hatchery	1,813			1,813	
Intertie Development	350			350	
Cultural Resource Activities					
National Historic Preservation Act Compliance					
Hungry Horse	1,837		450	2,287	311
Minidoka	4,270		250	4,520	80
Yakima	1,958		100	2,058	
FY 2001 TOTALS FOR REGION	45,338	225	4,340	49,903	4,172
Performance Incentive	394				

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ANNUAL POWER BUDGET

Power Budget for Fiscal Year 1997 (\$000)

Major Line Items	FY 1997 Base Request	Extraordinary Maintenance	Replacements and Additions	O&M Power Costs FY 1997	Appropriated Multipurpose Items
General Coordination	506			506	
Boise	2,589	30	469	3,088	140
Columbia Basin	27,705	10	2,463	30,178	500
Leavenworth Fish Hatchery	1,594			1,594	
Intertie Development Cultural Resource Activities	250			250	
National Historic Preservation Act Compliance	470			470	
Hungry Horse	1,893	45	112	2,050	180
Minidoka	4,402	125	2,275	6,802	40
Yakima	1,715	155	315	2,185	
FY 1997 TOTALS FOR REGION	41,124	365	5,634	47,123	860
Performance Incentive	0				

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PERFORMANCE INDICATORS AND PERFORMANCE INCENTIVES

1. PERFORMANCE OBJECTIVES

- (a) **Operational Objectives** - In accordance with standard utility practice (Federal Energy Regulatory Commission, Western Systems Coordination Council, Northwest Power Pool) the generating projects were operated to meet the overall system operating requirements and to practice effective water management to the generating system. This takes into consideration reserve allocations, adherence to voltage control schedules, switching reliability, communication links between Bonneville and Reclamation, and water availability.
- (b) **Maintenance Objectives** - Generation availability targets are met or exceeded based on a month-by-month equivalent availability which takes into consideration the planned outages, forced outages, and any unit deratings. Transmission switchyard maintenance is accomplished as scheduled and there are no inadvertent power system disruptions. The generation and transmission availability will be based on the maintenance and outage schedule that is agreed to by Bonneville and Reclamation. Bonneville and Reclamation shall coordinate maintenance activities to make the best use of crews, contractors, and equipment.
- (c) **Budgetary Objectives** - The Joint Operating Committee (JOC) shall establish the Annual Power Budget. The Annual Power Budget shall not be exceeded unless there has been some unforeseen event which the JOC has been notified of, or there has been direction from Bonneville and agreement between the Parties that causes the Annual Power Budget to be exceeded.

2. PERFORMANCE INDICATORS

Any unforeseen events or agreed-to changes that have an impact on the Performance Indicators shall be taken into consideration in the measurement of performance.

(a) Operational Standards and Indicators

- (1) **STANDARD** - In accordance with standard utility practices; maintain adherence to established voltage schedules, maintain communication between Bonneville dispatchers and the generating facilities to assure reserves are kept to proper or requested levels, and assure that there are no inadvertent power system equipment trips.

INDICATOR - There are no breakdowns in communication systems, AGC links are maintained and there are no major system disruptions due to inadvertent power system trips.

- (2) STANDARD - Generating facilities are responsive to Bonneville requests for system support needs; i.e., remedial action scheme requests, deviation responses, thermal line overloads requiring reduced generation.

INDICATOR - Generating facilities respond in a manner to Bonneville requests that are no major system disruptions. Area control error deviations are returned to zero within 10 minutes.

- (3) STANDARD - Generating facilities are operated to meet the overall system needs (i.e., Federal Columbia River Power System operating requirements).

INDICATOR - A subgroup of the JOC is established and meets on a regular basis, at least twice per Fiscal Year, to discuss and implement ways in which the system can operate as efficiently as possible.

(b) Maintenance Standards and Indicators

- (1) STANDARD - A maintenance and outage schedule is agreed to among the JOC and put in place by September 1 preceding the Fiscal Year start. Any changes to this are coordinated through the JOC.

INDICATOR - A maintenance and outage schedule is in place by October 1.

- (2) STANDARD - The agreed-to maintenance and outage schedule is adhered to, with the exception of any unforeseen events or agreed-to changes.

INDICATOR - Any changes to the maintenance and outage schedule is coordinated in advance of the outage. Bonneville is notified in a timely manner of any changes required due to unforeseen circumstances.

- (3) STANDARD - The actual equivalent unit availability is met or exceeded when compared to what had been planned and agreed to at

the beginning of the year with the maintenance and outage schedule. The equivalent unit availability takes into consideration planned outages, forced outages, and any unit deratings.

INDICATOR - The actual equivalent unit availability is greater than the planned.

- (4) STANDARD - Bonneville and Reclamation maintenance activities are coordinated to make the best use of crews, contractors, and equipment.

INDICATOR - Bonneville and Reclamation meet at least every 6 months to coordinate maintenance activities.

(c) **Budgetary Standard and Indicator**

STANDARD - Total Annual Power Budget, Exhibit B, is not exceeded.

INDICATOR - Actual expenditures for the Total Annual Power Budget, Exhibit B, is compared to the beginning-of-year estimates or agreed-to changes at the end of the year to assure that it is not exceeded.

3. PERFORMANCE INCENTIVES

- (a) A Performance Incentive shall be available to Reclamation in the maximum amount of 1 percent of the base salary level for Reclamation personnel in the Annual Power Budget.
- (b) Each Annual Power Budget shall contain a line item for the annual Performance Incentive. The Performance Incentive for a specific year shall be included in the following year's Annual Power Budget. The final year's Performance incentive within a Five-Year Power Budget period shall be included in the first year of the next Five-Year Power Budget period.
- (c) Within 60 days of the completion of each Fiscal Year, Reclamation will prepare and submit to the JOC information relating to the Performance Indicators.
- (d) The JOC will review this information and any other relevant material to determine to what extent the Performance Objectives have been achieved.

Exhibit C, Page 4 of 4
Bonneville Contract No. 96MS-95129
Reclamation Contract No. 1425-6-AA-10-01150
Effective at 2400 Hours on September 30, 1996

- (e) If eight or more of the Performance Indicators are achieved, the maximum amount of the Performance Incentive shall be paid to Reclamation.
- (f) If five to seven of the Performance Indicators are achieved, 70 percent of the maximum amount of the Performance Incentive shall be paid to Reclamation.
- (g) However, if the Budgetary Performance Indicator in section 2(c) above is exceeded by more than five (5) percent, no Performance Incentive shall be paid.
- (h) If an incentive has been achieved, as determined by the JOC, Reclamation shall invoice Bonneville the amount recommended by the JOC.
- (i) Reclamation shall maintain records of its performance incentive activities adequate for Office of Personnel Management review.

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MEMORANDUM OF AGREEMENT
between the
DEPARTMENT OF ENERGY
acting by and through the
BONNEVILLE POWER ADMINISTRATION
and the
DEPARTMENT OF THE ARMY

Direct Funding of Power
Operations and Maintenance Costs
at Corps Projects

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This MEMORANDUM OF AGREEMENT (Agreement), is executed by the Administrator of the BONNEVILLE POWER ADMINISTRATION (BPA) and the Assistant Secretary of the Army (Civil Works), each sometimes hereinafter referred to individually as “Signatory” and jointly as “Signatories.” This Agreement shall be implemented by BPA and the U.S. ARMY CORPS OF ENGINEERS, NORTHWESTERN DIVISION, Division Commander, (the Corps), each sometimes hereinafter referred to individually as “Party” and jointly as “Parties.”

W I T N E S S E T H :

WHEREAS the Corps operates and maintains hydroelectric power generation facilities in the Pacific Northwest, and BPA markets and transmits the hydropower output that is not required in the operation of the Corps projects; and

WHEREAS under this Agreement, BPA will direct fund annual Operations and Maintenance (O&M) Power Costs pursuant to the terms and conditions contained herein; and

WHEREAS a portion of the Corps’ O&M budget will continue to be provided through appropriations by the U.S. Congress; and

WHEREAS BPA currently makes U.S. Treasury payments equal to the Corps’ annual O&M Power Costs allocated to power, and such O&M Power Costs include interest on and amortization of the Corps’ capital investments allocated to power in the Pacific Northwest; and

WHEREAS BPA has a business interest in the formulation, prioritization, and efficient execution of the hydropower O&M program and, conversely, the Corps has a business interest in the impacts of BPA’s market decisions; and

WHEREAS the Corps has the responsibility to operate to serve authorized project multiple purposes, including the generation of power; and

WHEREAS the Corps has the responsibility for the technical integrity and public safety associated with the projects and associated facilities; and

WHEREAS the Corps and BPA will collaborate in the planning, design, construction, O&M activities of the Corps' facilities and projects, with the Corps retaining the responsibility to ensure the integrity of the power generation facilities; and

WHEREAS the Corps and BPA will collaborate in the planning and management of the O&M Power Costs; and

WHEREAS the Corps' and BPA's strategic visions shall serve as a basis for establishing an effective partnership while serving the general public interests inherent in the project authorities; and

WHEREAS the Corps and BPA are seeking to establish procedures whereby the O&M Power Costs are funded reliably and adequately in a manner that is mutually beneficial to the Parties; and

WHEREAS the Corps has the authority to incur obligations to the extent reflected in this Agreement; and

WHEREAS this Agreement is entered into pursuant to the authority contained in the National Energy Policy Act of 1992, Public Law 102-486, Section 2406 (the Act); and

WHEREAS BPA is authorized pursuant to law to market electric power and energy generated at various Federal hydroelectric projects in the Pacific Northwest or acquired from other resources, to construct and operate transmission facilities, to provide transmission and other services, and to enter into agreements to carry out such authority;

NOW, THEREFORE, the Parties and Signatories hereto mutually agree as follows:

1. **TERM, EXTENSION, AND TERMINATION**

(a) **Term of Agreement**

This Agreement shall be in effect when executed by the Signatories and shall continue in effect through September 30, 2008, unless extended as provided for in Section 1(b), or terminated earlier as provided in Section 1(c)(1). All liabilities incurred hereunder are preserved until satisfied.

(b) **Extension of Agreement**

During the Fiscal Year that begins October 1, 2002, the Signatories may, if mutually agreeable, extend the term of this Agreement by an additional five Fiscal Years, until September 30, 2013 (a 10-year term). In this event, the Signatories shall prepare and execute an amendment to this Agreement to accomplish such extension. The Signatories may, if mutually agreeable, extend the term of this Agreement in five-year increments past the year 2013. The Signatories may agree to such extensions by the end of the fifth Fiscal Year, of any 10-year term.

(c) **Termination of Agreement**

(1) **Unilateral Termination Rights**

Either Signatory may terminate this Agreement upon written notice to the other Signatory; provided, however, that any such written notice shall specify a termination date that is at least two Fiscal Years subsequent to the date shown on the notice. In the event of termination, BPA shall continue to be responsible for all costs incurred by the Corps under this Agreement and for the costs of closing out or transferring any ongoing contracts.

(2) **Termination Option Following Third-Year Review**

Within 180 days following the end of the third Fiscal Year of this Agreement, the Joint Operating Committee (JOC) shall compile

information, prepare, and submit a report to the Parties and Signatories. Such report shall provide an in-depth analysis of the cost effectiveness and efficacy of performance under this Agreement. Such report shall be provided to the Office of Management and Budget (OMB). If, within 30 days following receipt of such report, either Signatory determines that this Agreement is not achieving the benefits anticipated, then either Signatory may provide written notice to terminate this Agreement in accordance with Section 1(c)(1).

2. DEFINITIONS

- (a) “Annual Power Budget” means an annual budget prepared by the Corps that specifies O&M Power Costs for each Project for the upcoming Fiscal Year. Each Annual Power Budget shall be attached hereto as Exhibit B.
- (b) “Authorized Representative” means one representative appointed by BPA and one representative appointed by the Corps to serve as lead representatives on the JOC.
- (c) “Corps Project” means any of the Corps’ facilities associated with hydroelectric power generation facilities located in the Pacific Northwest for which BPA is the designated Federal power marketing agency.
- (d) “Fiscal Year” means a one year period that begins on October 1 and ends on the following September 30.
- (e) “Five Year Power Budget” means the estimated maximum amounts of the Annual Power Budgets for five consecutive Fiscal Years that BPA will direct fund under this Agreement. Each Five Year Power Budget shall be attached hereto as Exhibit A.
- (f) “Hydropower Specific Costs” means all costs for labor, materials, and expenses incurred in the O&M, repair, replacement, additions and efficiency improvements to the powerplant generating and accessory electrical and

mechanical equipment. Such costs also include the switchyard electrical and mechanical equipment to the point where electricity leaves for transmission by the marketing agency. Costs for planning, design, and related activities in support of the hydropower program are included in this category.

- (g) “Joint Operating Committee” (JOC) means a committee comprised of the Authorized Representative of each Party and other designated participants.
- (h) “Joint Use Costs” means all costs for labor, materials, and expenses incurred in the O&M, repair, replacement, additions, and efficiency improvements to the dam structures, reservoir, buildings, grounds and utilities, and appurtenant equipment and accessories that are shared with other project purposes. Costs for planning, design, water control management, dam safety, and related activities in support of the above are included in this category.
- (i) “O&M Power Costs” means, for activities performed at the Corps Projects:
 - (1) power O&M expense costs incurred by the Corps, which include Hydropower Specific Costs and the power portion of Joint Use Costs; and
 - (2) power capital items funded under the Annual Power Budget.
- (j) “Performance Indicators” means specific operational or budgetary indicators established by the JOC for each Fiscal Year. Performance Indicators shall be as described in Exhibit C.
- (k) “Prior Bonneville Payment Obligation” means an obligation for the payment or transfer of cash by BPA other than payments; (i) provided under this Agreement; (ii) under other agreements entered into under 16 U.S.C. section 839d-1; and/or (iii) described in 16 U.S.C. 838i(b)(8)-(10).

3. EXHIBITS: INTERPRETATION

Five Year Power Budget (Exhibit A), Annual Power Budget (Exhibit B), and Performance Indicators (Exhibit C) are attached hereto and hereby made a part of this Agreement. If there is a conflict between the body of this Agreement and the exhibits attached hereto, then the body of this Agreement shall prevail.

4. **BUDGETS**

The Parties agree to develop, through the JOC, a Five Year Power Budget for the purposes of inclusion in the BPA rate case and to fund the Corps O&M Power Costs. The Five Year Power Budget consists of five separate Annual Power Budgets. The total amount of the Five Year Power Budget remains fixed over the designated five-year term, unless revised as provided for in Section 4(a)(3). The Corps shall for information purposes include in the Annual Power Budget as a separate item the power portion of any Joint Use Costs for which the Corps expects to receive an appropriation, and for which BPA is expected to reimburse the Treasury.

(a) **FIVE YEAR POWER BUDGET**

(1) **Initial Five Year Power Budget**

The initial Five Year Power Budget shall become effective on October 1, 1998, and is attached hereto as Exhibit A.

(2) **Subsequent Five Year Power Budgets**

Based upon discussions in the JOC and no later than June 15 of the fourth Fiscal Year during a Five Year Power Budget, the Corps shall prepare and submit to BPA a revised Five Year Power Budget to become effective on October 1 of the sixth Fiscal Year. The June 15 submittal shall be coordinated with BPA's annual request for budget information. Any subsequent Five Year Power Budget shall not become effective unless approved by the Parties. If either Party does not approve a Five Year Power Budget, that Party shall provide written notice to the other, stating its reasons for disapproval. The Parties shall then use reasonable efforts to agree on a Five Year Power Budget. Following agreement by the Parties, the Parties shall prepare and execute a revision to Exhibit A for the subsequent five-year period.

(3) **Revision of a Five Year Power Budget Prior to its Expiration**

Any budget revisions shall be initiated by the JOC. Any proposed revision to a Five Year Power Budget shall not become effective unless approved by the Parties. If either Party does not approve a proposed revision to a Five Year Power Budget, that Party shall provide written notice to the other, stating the reasons for disapproval. The Parties shall then use reasonable efforts to agree on a revision to the Five Year Power Budget. Following agreement by the Parties, the Parties shall prepare and execute a revision to Exhibit A for the remaining period of such revised Five Year Power Budget. Appropriate changes shall also be made, as necessary, in any Annual Power Budget, Exhibit B.

(4) **Disagreement on New Five Year Power Budget**

If the Parties cannot agree to a new Five Year Power Budget prior to expiration of the existing Five Year Power Budget, then the last executed Annual Power Budget shall be extended in one year increments. Each subsequent year's Annual Power Budget shall be equal to the most recently executed Annual Power Budget, adjusted to include budgets for any deferrals, undelivered orders, or savings in accordance with Section 5. The adjusted Annual Power Budget will remain in effect until a new Five Year Power Budget is agreed to or established in accordance with Section 9, Dispute Resolution of this Agreement.

(b) **ANNUAL POWER BUDGET**

(1) **Initial Annual Power Budget**

The initial Annual Power Budget shall be effective on October 1, 1998, and is attached hereto as Exhibit B.

(2) **Subsequent Annual Power Budgets**

No later than June 15 of each Fiscal Year, the JOC shall meet to review and to approve any revisions to the next Fiscal Year's Annual Power Budget. The Authorized Representatives shall prepare and execute a revised Exhibit B for the next Fiscal Year. Each

June 15 submittal shall be coordinated with BPA's annual request for budget information.

(3) **Revision of Annual Power Budget Prior to its Expiration**

The JOC may revise any Annual Power Budget prior to its expiration. The Authorized Representatives shall prepare and execute a revision to Exhibit B for the remaining period of the Fiscal Year. Any revisions shall not change the total amount of the Five Year Power Budget, unless the Parties agree in writing pursuant to Section 4(a)(3).

5. COMPARISON OF ACTUAL O&M POWER COSTS TO ANNUAL POWER BUDGET FOLLOWING EACH FISCAL YEAR

(a) **Review By JOC**

Within 90 days following the end of each Fiscal Year, the Corps shall provide an accounting of the actual O&M Power Costs incurred to the Authorized Representatives, and the JOC shall convene to compare such actual O&M Power Costs incurred by the Corps to the Annual Power Budget amount. Each comparison shall exclude any amounts available under Section 5(b)(2) from a previous year or years.

(b) **Actual O&M Power Costs Less Than Annual Power Budget**

(1) If actual O&M Power Costs were less than anticipated due to program deferrals or undelivered orders, the total amount of such deferrals or undelivered orders shall be available for use in a future Fiscal Year.

(2) If actual O&M Power Costs were less than anticipated due to a savings that is not expected to occur at a future date (i.e., efficiency gains, or changes in maintenance practices), these savings will be shared equally between the Parties. Fifty percent of the savings shall remain with BPA. The Corps' share of the savings shall be available for mutually-beneficial use for the Corps Projects in a future Fiscal Year.

- (3) In the event that there are any amounts pursuant to Section 5(b)(1) or Section 5(b)(2) during a Fiscal Year, these amounts shall be available for the Corps' use in a future Fiscal Year for O&M Power Cost items. Such amounts shall be held by BPA in a separate budget item, and shall be available for use by the Corps provided, however, that the total amount used during any Fiscal Year shall not exceed five million dollars (\$5 million), unless approved by the JOC prior to expenditure. To the extent possible, the Corps shall either: (A) provide to the JOC a revised Five Year Power Budget that incorporates such amounts; or (B) provide the JOC with an estimate of when such amounts would be spent in a subsequent Five Year Power Budget. Revisions to any current Five Year Power Budget shall be made in accordance with Section 4(a)(3) of this Agreement. The cumulative amounts in this budget item shall not exceed twenty million dollars (\$20 million), unless otherwise agreed to in writing by BPA. Amounts remaining in this budget item can be extended beyond the current Five Year Power Budget.

6. TRANSFER OF FUNDS TO CORPS

- (a) BPA shall pay all costs, including overhead charges, on O&M requirements, addition, replacement, or improvement work pursuant to mutually-agreed upon Five Year Power Budgets, and Annual Power Budgets entered into under this Agreement. The cost of overhead charges shall be determined in accordance with the Corps policy and with General Accounting Office principles and standards.
- (b) BPA shall obligate 100 percent of the annual funding requirements set forth in the Annual Power Budget at the beginning of each Fiscal Year. This obligation sets aside funds as budgetary resources for the Corps and certifies the availability of funds to the Corps, but does not transfer any of BPA's repayment responsibilities to the Department of the Army or the Corps. By

means of the Annual Power Budget, BPA enters into a binding agreement that obligates BPA to fund all costs associated with the Annual Power Budget and guarantees the availability of funds to the Corps for work specified in the Annual Power Budget, subject only to the termination provisions of this Agreement.

- (c) The Annual Power Budgets are the documents which the Corps is authorized to obligate against and fulfills the same functions as an SF 1151, Non-Expenditure Transfer Authorization. Mutually agreed upon Five Year Power Budgets, Annual Power Budgets, and any respective revisions thereto shall be forwarded to Headquarters, USACE (HQ USACE), ATTN: CERM-FC, Washington, DC 20314-1000. Approved Power Budgets will be used by Headquarters, U.S. Army Corps of Engineers (HQ USACE) for issuance of Work Allowance Documents for each project to the performing Corps District.
- (d) The Corps has reprogramming authority, in consultation with BPA, to transfer all funds between Corps Projects once funds are issued by HQ USACE. This transfer authority will not affect the total Annual or Five Year Power Budget. The Corps Authorized Representative will report at least monthly all reprogramming action to the BPA Authorized Representative.
- (e) The BPA Fund is established pursuant to 16 U.S.C. §838 and consists of, inter alia, all proceeds derived from the sale of bonds, notes and other evidences of indebtedness, all receipts, collections and recoveries of BPA, and Congressional appropriations made to BPA. The BPA Administrator is authorized to make expenditures out of the BPA Fund for authorized purposes, such as funding work proposed pursuant to the Act, provided such program expenditures have been submitted to Congress in BPA's budget.
- (f) BPA shall make cash transfers to the Corps from the BPA Fund in advance of any Corps disbursements. The Corps' request for payment for expenditures

incurred pursuant to the Annual Power Budget is not subject to audit or certification in advance of payment. The U.S. Treasury's On-Line Payment and Collection System (OPAC), or a mutually agreed upon alternative, will be used to accomplish the necessary cash transfer from the BPA Fund.

- (g) Both Parties agree to provide each other all pertinent power related financial information, including but not limited to: estimated OPAC cash transfers and other financial transactions, accounting records, underlying assumptions, methodology, and data as needed to assist their respective efforts.
- (h) Notwithstanding any other provision of this Agreement, BPA shall make payments hereunder subject to the prior application of amounts in the BPA Fund to the payment of Prior Bonneville Payment Obligations then due.
- (i) Any O&M Power Cost items that are funded through methods other than this Agreement will not be funded by BPA pursuant to this Agreement.

7. PERFORMANCE INDICATORS

Performance Indicators shall be used to establish a basis for measuring and evaluating performance under this Agreement. The Performance Indicators shall become effective on October 1, 1998, and shall be as described in Exhibit C. No later than June 15 of each Fiscal Year the JOC shall prepare and execute a new Exhibit C to become effective on the following October 1.

8. JOINT OPERATING COMMITTEE RESPONSIBILITIES

- (a) The JOC shall consist of members from both Parties, with consistent representation from BPA's generation supply and accounting operations. The Corps shall have representation as necessary to reflect corporate, financial, operations, and project interests.

- (b) Each Party's Authorized Representative shall have one vote and shall be the only voting member of the JOC for that Party.
- (c) The Authorized Representatives shall serve as the central point of contact on the implementation of the terms and conditions under this Agreement. The Authorized Representatives shall provide for consistent and effective communication between the Corps and BPA.
- (d) In accordance with Section 4 of this Agreement, the JOC shall discuss subsequent Five Year Power Budgets and shall initiate any revisions of Five Year Power Budgets. The JOC shall review and approve any revisions to current and subsequent Annual Power Budgets, if necessary. The JOC shall execute any changes to Exhibit B.
- (e) Within the time limits and in accordance with the provisions of Section 5 of the Agreement, the JOC shall compare the actual O&M Power Costs incurred by the Corps to the Annual Power Budget following each Fiscal Year.
- (f) The JOC shall develop, review, and approve Performance Indicators as provided in Section 5 of the Agreement. The JOC shall execute Exhibit C.
- (g) The JOC may designate subgroups which shall not have any of the authorities of the JOC, but shall report to and be responsible to carry out the instructions of the JOC.
- (h) The JOC shall serve as a forum for the Parties to discuss the coordination of the Corps and BPA's O&M schedules, outage schedules, and other issues. The JOC shall discuss in a timely manner all budgeted expenditures for construction and O&M at Corps Projects which impact the BPA rate case.
- (i) The Corps and BPA's Authorized Representatives shall notify each other as soon as possible in advance of any extraordinary event that may impact power generation and would not be reported through any existing process.

- (j) The BPA Authorized Representative shall notify the Corps Authorized Representative as soon as possible in advance of any unforeseen event that may prevent the transfer of funds to the Corps.
- (k) The JOC shall operate in a manner that is consistent with the missions, operating plans, and legal authorities of the Parties.
- (l) During the JOC's first meeting, the JOC shall initiate a review of the practices and procedures of each agency to identify areas where changes could improve the overall efficiency of the hydropower program in the region by incorporating more business-like processes and decisionmaking. Thereafter, the JOC shall perform periodic reviews at an agreed upon frequency. Upon completion of each review, the JOC shall expeditiously provide its recommendations to the respective agency for consideration and possible implementation.
- (m) This subsection defines a budget procedure for Hydropower Specific Costs for capital investments, including deferred investments, that may be made at Corps Projects under the authority of the 1994 MOA between BPA and the Department of the Army entered into under the Act (1994 MOA).
 - (1) The JOC jointly shall inventory the Corps Projects to identify needs and opportunities for capital investment.
 - (2) The JOC jointly shall develop the analytical tools and processes used to review this inventory. The JOC shall assess the performance of the Corps Projects under this Agreement in accordance with Exhibit C and evaluate the results using standards developed by the JOC.
 - (3) BPA shall provide the market related data to be used in these studies.

- (4) The JOC shall identify the transmission reliability investments at Corps projects.
 - (5) The JOC shall develop the estimated cost and schedule of the potential investments.
 - (6) The JOC shall rank and prioritize the potential investments using both the cost and schedule and estimated revenue information.
 - (7) The JOC shall make recommendations to the appropriate agency officials for capital investment pursuant to the 1994 MOA for incorporation into a multi-year capital investment budget.
 - (8) Practices of either agency which impede the analysis or implementation of any action under this Subsection shall be immediately reported to the Parties for immediate resolution.
- (n) The JOC shall prepare the report required by Section 1(c)(2) of this Agreement.

9. DISPUTE RESOLUTION

In the event of a dispute under this Agreement, the Parties or Signatories shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication or other forms of mutually acceptable nonbinding alternative dispute resolution. This provision shall not apply to the decision to amend or terminate this Agreement.

(a) Hydropower Specific Costs

The Parties and Signatories agree that, in the event such good faith efforts fail to resolve the dispute related to Hydropower Specific Costs, they shall refer administrative and policy matters to the OMB for resolution. Matters of statutory interpretation and dispute shall be referred to the U.S. Department of Justice for resolution.

(b) **Joint Use Costs**

The Parties agree that, in the event such good faith efforts fail to resolve the dispute related to Joint Use Costs, they shall refer the dispute through administrative channels to the Assistant Secretary of the Army (Civil Works) for resolution. One of the options available to the Assistant Secretary is to use appropriated funds for the activity in dispute. This option does not relieve the BPA from its obligations to the U.S. Treasury.

10. AUDITS

- (a) Each Party shall reserve the right to audit and to examine any cost, payment, settlement, or supporting documentation, including, but not limited to, audit reports resulting from any items set forth in this Agreement. Any audit(s) shall be undertaken by either Party's representative(s) upon reasonable notice to the other Party and at reasonable times and in conformance with generally-accepted auditing standards. The right to conduct audits shall include Project sites and facilities. The Party being audited agrees to cooperate fully with any such audit(s). The right to audit a cost shall extend for a period of three years following the last day of the Fiscal Year in which such cost was incurred under this Agreement. The Parties agree to retain all records and documentation related to this Agreement prepared in the normal course of business for the entire length of this audit period. The Parties agree that all accounting and records shall be maintained in accordance with generally-accepted accounting principles.
- (b) The Party being audited shall be notified in writing of any exception taken as a result of an audit promptly after completion of the audit. The Party being audited shall have 30 days to review the notice of exception and respond.

11. AGREEMENT AMENDMENTS AND REVISIONS

Notwithstanding any other provisions of this Agreement, the body of this Agreement (excluding exhibits) may be amended only by mutual written agreement of the Signatories. Exhibit A (Five year Power Budget) may be amended only by mutual written agreement of the Parties. Exhibit B (Annual Power Budget) and Exhibit C (Performance Indicators) may be revised following written agreement by the JOC.

12. ASSIGNMENT

Rights under this Agreement shall not be assigned, and obligations shall not be delegated under this Agreement.

13. NO THIRD PARTY BENEFICIARIES

There are no third party beneficiaries of this Agreement, and the intent of this Agreement is not to create any third party beneficiaries.

14. INFORMATION COORDINATION

Justification and explanation of this Agreement, or any Exhibit before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the Parties and Signatories. The Parties and Signatories may provide any assistance necessary to support each other's justification or explanations of the programs conducted under this Agreement. Each Party or Signatory shall be responsible for its own testimony before Congress. The Parties and Signatories shall coordinate public announcements, except that the Corps will respond to all inquiries relating to the its ordinary procurement and contract award and administration process and coordinate with BPA as appropriate. Each Party and Signatory shall make its best efforts to give the other advance notice before making any public statement regarding work contemplated, undertaken, or completed under this Agreement.

15. MISCELLANEOUS

(a) Other Relationships or Obligations

This Agreement is not intended to and does not alter or affect the statutory and other legal rights, authorities, responsibilities, and obligations of the Secretary of the Army and BPA and the right and authority of the Parties to interpret and implement any other statutory authority.

(b) Survival

The provisions of this Agreement which require continued performance of the work until its completion, after the expiration of this Agreement shall remain in force notwithstanding the expiration of this Agreement.

(c) **Severability**

If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

(d) **Transfer of Rights or Property**

In the event of assignment or transfer of Corps hydropower assets, the Corps shall provide BPA with notice of the assignment or transfer, together with a true copy of the instrument of assignment or transfer not less than 10 days prior to the intended date of execution. This Agreement shall not be to the benefit of and binding upon the respective successors and assigns of the Parties. The Parties shall agree upon associated amount of O&M Power Costs to be deleted from this agreement.

16. NOTICES

Unless the Agreement requires otherwise, any notice, demand, or request provided for in this Agreement, or served, given, or made in connection with it, shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by electronic transfer, or by acknowledged delivery, or sent by registered or certified mail, postage prepaid, to the persons specified below:

To BPA: United States Department of Energy
BPA Power Administration
905 NE. 11th Avenue (97232)
P.O. Box 3621
Portland, OR 97208-3621
ATTN: Manager, Federal Hydro Projects - PGF

To the Corps: United States Department of the Army
U.S. Army Corps of Engineers
Northwestern Division
P.O. Box 2870
Portland, OR 97208-2870
ATTN: Commander

Any Party may, by written notice to the other Party, change the designation or address of the person so specified as the one to receive notices pursuant to this Agreement.

IN WITNESS WHEREOF, the Signatories hereto have executed this Agreement in several counterparts.

Department of the Army

Department of Energy
Bonneville Power Administration

By /S/ JOHN ZIRSCHKY

By /S/ JACK ROBERTSON

Name Dr. John Zirschky
(Print/Type)

Name Jack Robertson
(Print/Type)

Title Assistant Secretary of the Army
 (Civil Works)

Title Acting Administrator and
 Chief Executive Officer

Date 22 DEC 1997

Date 22 DEC 1997

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FIVE YEAR POWER BUDGET

Fiscal Year	Routine Power	Nonroutine Power	Subtotal	Routine Joint (BPA)	Nonroutine Joint (BPA)	Subtotal Joint (BPA)	Total BPA	Routine Joint (APPR)	Nonroutine Joint (APPR)	Subtotal Joint (APPR)	Subtotal Joint	Total BPA+ APPR
1999	\$56,780	\$3,000	\$59,780	\$43,220	\$3,000	\$46,220	\$106,000	\$17,755	\$2,515	\$20,270	\$66,490	\$126,270
2000	\$57,111	\$3,000	\$60,111	\$43,889	\$3,000	\$46,889	\$107,000	\$18,074	\$2,515	\$20,589	\$67,478	\$127,589
2001	\$57,772	\$3,000	\$60,772	\$44,228	\$3,000	\$47,228	\$108,000	\$18,295	\$2,515	\$20,810	\$68,038	\$128,810
2002	\$61,134	\$3,000	\$64,134	\$46,866	\$3,000	\$49,866	\$114,000	\$19,422	\$2,515	\$21,937	\$71,803	\$135,937
2003	\$63,733	\$3,000	\$66,733	\$48,267	\$3,000	\$51,267	\$118,000	\$20,130	\$2,515	\$22,645	\$73,913	\$140,645

Five Year Power Budget Total	<u>\$553,000</u>	Total Program	<u>\$659,251</u>
Notes <ul style="list-style-type: none"> Dollars in \$000 The Five Year Power Budget Total can only be revised by the Parties.		Notes <ul style="list-style-type: none"> The data in this box is provided for informational purposes. 	

ANNUAL POWER BUDGET, FISCAL YEAR 1999

Project	Routine Power	Nonroutine Power	Subtotal	Routine Joint (BPA)	Nonroutine Joint (BPA)	Subtotal Joint (BPA)	Total BPA	Routine Joint (APPR)	Nonroutine Joint (APPR)	Subtotal Joint (APPR)	Subtotal Joint	Total BPA+ APPR
Albeni Falls	\$ 1,614	\$ 100	\$ 1,714	\$ 1,522	\$ 100	\$ 1,622	\$ 3,336	\$ 31	\$ 2	\$ 33	\$ 1,655	\$ 3,369
Bonneville 1	\$ 3,858	\$ 100	\$ 3,958	\$ 4,092	\$ 100	\$ 4,192	\$ 8,149	\$ 4,092	\$ 100	\$ 4,192	\$ 8,383	\$ 12,341
Bonneville 2	\$ 2,279	\$ 100	\$ 2,379	\$ 1,724	\$ 100	\$ 1,824	\$ 4,203			\$ 0	\$ 1,824	\$ 4,203
Chief Joseph	\$11,102	\$ 250	\$11,352	\$ 1,036	\$ 250	\$ 1,286	\$ 12,639			\$ 0	\$ 1,286	\$ 12,639
Cougar	\$ 400	\$ 100	\$ 500	\$ 170	\$ 100	\$ 270	\$ 771	\$ 704	\$ 413	\$ 1,117	\$ 1,387	\$ 1,887
Detroit-Big Cliff	\$ 1,230	\$ 100	\$ 1,330	\$ 673	\$ 100	\$ 773	\$ 2,103	\$ 660	\$ 98	\$ 758	\$ 1,531	\$ 2,861
Dworshak	\$ 1,605	\$ 100	\$ 1,705	\$ 3,807	\$ 100	\$ 3,907	\$ 5,612	\$ 758	\$ 20	\$ 778	\$ 4,685	\$ 6,390
Green Peter-Foster	\$ 1,149	\$ 100	\$ 1,249	\$ 736	\$ 100	\$ 836	\$ 2,085	\$ 917	\$ 125	\$ 1,042	\$ 1,878	\$ 3,127
Hills Creek	\$ 325	\$ 100	\$ 425	\$ 102	\$ 100	\$ 202	\$ 626	\$ 371	\$ 365	\$ 736	\$ 937	\$ 1,362
Ice Harbor	\$ 3,388	\$ 200	\$ 3,588	\$ 2,522	\$ 200	\$ 2,722	\$ 6,309	\$ 687	\$ 54	\$ 741	\$ 3,463	\$ 7,050
John Day	\$ 6,018	\$ 250	\$ 6,268	\$ 6,417	\$ 250	\$ 6,667	\$ 12,935	\$ 1,706	\$ 66	\$ 1,772	\$ 8,439	\$ 14,707
Libby	\$ 2,845	\$ 200	\$ 3,045	\$ 1,423	\$ 200	\$ 1,623	\$ 4,668	\$ 401	\$ 56	\$ 458	\$ 2,081	\$ 5,126
Little Goose	\$ 2,026	\$ 200	\$ 2,226	\$ 2,516	\$ 200	\$ 2,716	\$ 4,942	\$ 181	\$ 14	\$ 195	\$ 2,911	\$ 5,137
Lookout Point-Dexter	\$ 1,216	\$ 100	\$ 1,316	\$ 1,160	\$ 100	\$ 1,260	\$ 2,576	\$ 2,062	\$ 178	\$ 2,240	\$ 3,500	\$ 4,816
Lost Creek	\$ 1,019	\$ 100	\$ 1,119	\$ 293	\$ 100	\$ 393	\$ 1,512	\$ 2,498	\$ 852	\$ 3,350	\$ 3,744	\$ 4,863
Lower Granite	\$ 2,233	\$ 200	\$ 2,433	\$ 3,786	\$ 200	\$ 3,986	\$ 6,419	\$ 27	\$ 1	\$ 28	\$ 4,014	\$ 6,448
Lower Monumental	\$ 2,712	\$ 200	\$ 2,912	\$ 2,632	\$ 200	\$ 2,832	\$ 5,744	\$ 192	\$ 15	\$ 207	\$ 3,039	\$ 5,951
McNary	\$ 4,767	\$ 250	\$ 5,017	\$ 5,530	\$ 250	\$ 5,780	\$ 10,797	\$ 1,272	\$ 58	\$ 1,329	\$ 7,110	\$ 12,126
The Dalles	\$ 6,994	\$ 250	\$ 7,244	\$ 3,079	\$ 250	\$ 3,329	\$ 10,574	\$ 1,197	\$ 97	\$ 1,295	\$ 4,624	\$ 11,868
Totals	\$56,780	\$3,000	\$59,780	\$43,220	\$3,000	\$46,220	\$106,000	\$17,755	\$2,515	\$20,270	\$66,490	\$126,270

FY 1999 Annual Power Budget Total	<u>\$106,000</u>	Total Program	<u>\$126,270</u>
Notes <ul style="list-style-type: none"> Dollars in \$000 The Annual Power Budget can only be revised by the JOC. The estimated cost of a single piece of O&M power equipment shall not exceed \$200,000 for any Corp Project, unless agreed to by the JOC. 		Notes <ul style="list-style-type: none"> The data in this box is provided for informational purposes. 	

ANNUAL POWER BUDGET, FISCAL YEAR 2000

Project	Routine Power	Nonroutine Power	Subtotal	Routine Joint (BPA)	Nonroutine Joint (BPA)	Subtotal Joint (BPA)	Total BPA	Routine Joint (APPR)	Nonroutine Joint (APPR)	Subtotal Joint (APPR)	Subtotal Joint	Total BPA+ APPR
Albeni Falls	\$ 1,442	\$ 100	\$ 1,542	\$ 1,542	\$ 100	\$ 1,642	\$ 3,184	\$ 31	\$ 2	\$ 34	\$ 1,675	\$ 3,217
Bonneville 1	\$ 3,911	\$ 100	\$ 4,011	\$ 4,147	\$ 100	\$ 4,247	\$ 8,258	\$ 4,147	\$ 100	\$ 4,247	\$ 8,493	\$ 12,504
Bonneville 2	\$ 2,309	\$ 100	\$ 2,409	\$ 1,748	\$ 100	\$ 1,848	\$ 4,257			\$ 0	\$ 1,848	\$ 4,257
Chief Joseph	\$12,098	\$ 250	\$12,348	\$ 1,050	\$ 250	\$ 1,300	\$13,648			\$ 0	\$ 1,300	\$ 13,648
Cougar	\$ 417	\$ 100	\$ 517	\$ 174	\$ 100	\$ 274	\$ 792	\$ 720	\$ 413	\$ 1,133	\$ 1,407	\$ 1,924
Detroit-Big Cliff	\$ 1,252	\$ 100	\$ 1,352	\$ 674	\$ 100	\$ 774	\$ 2,125	\$ 660	\$ 98	\$ 759	\$ 1,532	\$ 2,884
Dworshak	\$ 1,488	\$ 100	\$ 1,588	\$ 3,855	\$ 100	\$ 3,955	\$ 5,544	\$ 767	\$ 20	\$ 787	\$ 4,743	\$ 6,331
Green Peter-Foster	\$ 1,187	\$ 100	\$ 1,287	\$ 760	\$ 100	\$ 860	\$ 2,147	\$ 947	\$ 125	\$ 1,072	\$ 1,932	\$ 3,219
Hills Creek	\$ 371	\$ 100	\$ 471	\$ 104	\$ 100	\$ 204	\$ 675	\$ 379	\$ 365	\$ 744	\$ 947	\$ 1,419
Ice Harbor	\$ 2,672	\$ 200	\$ 2,872	\$ 2,549	\$ 200	\$ 2,749	\$ 5,621	\$ 694	\$ 54	\$ 749	\$ 3,498	\$ 6,370
John Day	\$ 6,506	\$ 250	\$ 6,756	\$ 6,595	\$ 250	\$ 6,845	\$13,601	\$ 1,753	\$ 66	\$ 1,820	\$ 8,665	\$ 15,420
Libby	\$ 2,883	\$ 200	\$ 3,083	\$ 1,443	\$ 200	\$ 1,643	\$ 4,726	\$ 407	\$ 56	\$ 463	\$ 2,106	\$ 5,189
Little Goose	\$ 2,024	\$ 200	\$ 2,224	\$ 2,543	\$ 200	\$ 2,743	\$ 4,967	\$ 183	\$ 14	\$ 197	\$ 2,940	\$ 5,164
Lookout Point-Dexter	\$ 1,257	\$ 100	\$ 1,357	\$ 1,199	\$ 100	\$ 1,299	\$ 2,656	\$ 2,131	\$ 178	\$ 2,309	\$ 3,608	\$ 4,965
Lost Creek	\$ 1,033	\$ 100	\$ 1,133	\$ 297	\$ 100	\$ 397	\$ 1,530	\$ 2,530	\$ 852	\$ 3,383	\$ 3,780	\$ 4,913
Lower Granite	\$ 2,170	\$ 200	\$ 2,370	\$ 3,829	\$ 200	\$ 4,029	\$ 6,399	\$ 27	\$ 1	\$ 28	\$ 4,057	\$ 6,428
Lower Monumental	\$ 2,143	\$ 200	\$ 2,343	\$ 2,660	\$ 200	\$ 2,860	\$ 5,204	\$ 194	\$ 15	\$ 209	\$ 3,069	\$ 5,412
McNary	\$ 4,710	\$ 250	\$ 4,960	\$ 5,590	\$ 250	\$ 5,840	\$10,801	\$ 1,286	\$ 58	\$ 1,343	\$ 7,184	\$ 12,144
The Dalles	\$ 7,237	\$ 250	\$ 7,487	\$ 3,130	\$ 250	\$ 3,380	\$10,867	\$ 1,217	\$ 97	\$ 1,314	\$ 4,694	\$ 12,181
Totals	\$57,111	\$3,000	\$60,111	\$43,889	\$3,000	\$46,889	\$107,000	\$18,074	\$2,515	\$20,589	\$67,478	\$127,589

FY 2000 Annual Power Budget Total	<u>\$107,000</u>	Total Program	<u>\$127,589</u>
Notes <ul style="list-style-type: none"> Dollars in \$000 The Annual Power Budget can only be revised by the JOC. The estimated cost of a single piece of O&M power equipment shall not exceed \$200,000 for any Corps Project, unless agreed to by the JOC. 		Notes <ul style="list-style-type: none"> The data in this box is provided for informational purposes. 	

ANNUAL POWER BUDGET, FISCAL YEAR 2001

Project	Routine Power	Nonroutine Power	Subtotal	Routine Joint (BPA)	Nonroutine Joint (BPA)	Subtotal Joint (BPA)	Total BPA	Routine Joint (APPR)	Nonroutine Joint (APPR)	Subtotal Joint (APPR)	Subtotal Joint	Total BPA+ APPR
Albeni Falls	\$ 1,452	\$ 100	\$ 1,552	\$ 1,553	\$ 100	\$ 1,653	\$ 3,205	\$ 32	\$ 2	\$ 34	\$ 1,687	\$ 3,239
Bonneville 1	\$ 3,941	\$ 100	\$ 4,041	\$ 4,179	\$ 100	\$ 4,279	\$ 8,320	\$,179	\$ 100	\$ 4,279	\$ 8,557	\$ 12,598
Bonneville 2	\$ 2,328	\$ 100	\$ 2,428	\$ 1,761	\$ 100	\$ 1,861	\$ 4,289			\$ 0	\$ 1,861	\$ 4,289
Chief Joseph	\$11,701	\$ 250	\$11,951	\$ 1,058	\$ 250	\$ 1,308	\$ 13,259			\$ 0	\$ 1,308	\$ 13,259
Cougar	\$ 433	\$ 100	\$ 533	\$ 176	\$ 100	\$ 276	\$ 809	\$ 727	\$ 413	\$ 1,140	\$ 1,416	\$ 1,949
Detroit-Big Cliff	\$ 1,297	\$ 100	\$ 1,397	\$ 689	\$ 100	\$ 789	\$ 2,186	\$ 675	\$ 98	\$ 773	\$ 1,562	\$ 2,959
Dworshak	\$ 1,499	\$ 100	\$ 1,599	\$ 3,881	\$ 100	\$ 3,981	\$ 5,580	\$ 773	\$ 20	\$ 792	\$ 4,774	\$ 6,373
Green Peter-Foster	\$ 1,220	\$ 100	\$ 1,320	\$ 780	\$ 100	\$ 880	\$ 2,200	\$ 973	\$ 125	\$ 1,097	\$ 1,977	\$ 3,297
Hills Creek	\$ 410	\$ 100	\$ 510	\$ 106	\$ 100	\$ 206	\$ 716	\$ 387	\$ 365	\$ 752	\$ 958	\$ 1,468
Ice Harbor	\$ 2,691	\$ 200	\$ 2,891	\$ 2,562	\$ 200	\$ 2,762	\$ 5,653	\$ 698	\$ 54	\$ 752	\$ 3,514	\$ 6,405
John Day	\$ 7,014	\$ 250	\$ 7,264	\$ 6,633	\$ 250	\$ 6,883	\$ 14,147	\$ 1,763	\$ 66	\$ 1,830	\$ 8,713	\$ 15,977
Libby	\$ 2,905	\$ 200	\$ 3,105	\$ 1,454	\$ 200	\$ 1,654	\$ 4,759	\$ 410	\$ 56	\$ 466	\$ 2,120	\$ 5,225
Little Goose	\$ 2,039	\$ 200	\$ 2,239	\$ 2,556	\$ 200	\$ 2,756	\$ 4,995	\$ 184	\$ 14	\$ 198	\$ 2,953	\$ 5,193
Lookout Point-Dexter	\$ 1,291	\$ 100	\$ 1,391	\$ 1,231	\$ 100	\$ 1,331	\$ 2,721	\$ 2,188	\$ 178	\$ 2,366	\$ 3,697	\$ 5,087
Lost Creek	\$ 1,041	\$ 100	\$ 1,141	\$ 300	\$ 100	\$ 400	\$ 1,540	\$ 2,554	\$ 852	\$ 3,406	\$ 3,806	\$ 4,947
Lower Granite	\$ 2,187	\$ 200	\$ 2,387	\$ 3,851	\$ 200	\$ 4,051	\$ 6,438	\$ 27	\$ 1	\$ 29	\$ 4,079	\$ 6,466
Lower Monumental	\$ 2,159	\$ 200	\$ 2,359	\$ 2,649	\$ 200	\$ 2,849	\$ 5,208	\$ 193	\$ 15	\$ 208	\$ 3,056	\$ 5,416
McNary	\$ 4,733	\$ 250	\$ 4,983	\$ 5,619	\$ 250	\$ 5,869	\$ 10,852	\$ 1,292	\$ 58	\$ 1,350	\$ 7,219	\$ 12,202
The Dalles	\$ 7,431	\$ 250	\$ 7,681	\$ 3,192	\$ 250	\$ 3,442	\$ 11,122	\$ 1,241	\$ 97	\$ 1,338	\$ 4,780	\$ 12,461
Totals	\$57,772	\$3,000	\$60,772	\$44,228	\$3,000	\$47,228	\$108,000	\$18,295	\$2,515	\$20,810	\$68,038	\$128,810

FY 2001 Annual Power Budget Total	<u>\$108,000</u>	Total Program	<u>\$128,810</u>
Notes <ul style="list-style-type: none"> Dollars in \$000 The Annual Power Budget can only be revised by the JOC. The estimated cost of a single piece of O&M power equipment shall not exceed \$200,000 for any Corps Project, unless agreed to by the JOC. 		Notes <ul style="list-style-type: none"> The data in this box is provided for informational purposes. 	

ANNUAL POWER BUDGET, FISCAL YEAR 2002

Project	Routine Power	Nonroutine Power	Subtotal	Routine Joint (BPA)	Nonroutine Joint (BPA)	Subtotal Joint (BPA)	Total BPA	Routine Joint (APPR)	Nonroutine Joint (APPR)	Subtotal Joint (APPR)	Subtotal Joint	Total BPA+ APPR
Albeni Falls	\$ 1,529	\$ 100	\$ 1,629	\$ 1,635	\$ 100	\$ 1,735	\$ 3,364	\$ 33	\$ 2	\$ 35	\$ 1,771	\$ 3,400
Bonneville 1	\$ 4,145	\$ 100	\$ 4,245	\$ 4,397	\$ 100	\$ 4,497	\$ 8,742	\$ 4,397	\$ 100	\$ 4,497	\$ 8,994	\$ 13,239
Bonneville 2	\$ 2,449	\$ 100	\$ 2,549	\$ 1,856	\$ 100	\$ 1,956	\$ 4,505			\$ 0	\$ 1,956	\$ 4,505
Chief Joseph	\$12,302	\$ 250	\$12,552	\$ 1,114	\$ 250	\$ 1,364	\$ 13,915			\$ 0	\$ 1,364	\$ 13,915
Cougar	\$ 469	\$ 100	\$ 569	\$ 187	\$ 100	\$ 287	\$ 856	\$ 770	\$ 413	\$ 1,183	\$ 1,469	\$ 2,039
Detroit-Big Cliff	\$ 1,403	\$ 100	\$ 1,503	\$ 735	\$ 100	\$ 835	\$ 2,338	\$ 720	\$ 98	\$ 818	\$ 1,653	\$ 3,156
Dworshak	\$ 1,578	\$ 100	\$ 1,678	\$ 4,081	\$ 100	\$ 4,181	\$ 5,859	\$ 812	\$ 20	\$ 832	\$ 5,013	\$ 6,691
Green Peter-Foster	\$ 1,309	\$ 100	\$ 1,409	\$ 837	\$ 100	\$ 937	\$ 2,346	\$ 1,045	\$ 125	\$ 1,169	\$ 2,107	\$ 3,515
Hills Creek	\$ 462	\$ 100	\$ 562	\$ 113	\$ 100	\$ 213	\$ 775	\$ 413	\$ 365	\$ 778	\$ 991	\$ 1,553
Ice Harbor	\$ 2,832	\$ 200	\$ 3,032	\$ 2,691	\$ 200	\$ 2,891	\$ 5,922	\$ 733	\$ 54	\$ 787	\$ 3,678	\$ 6,709
John Day	\$ 7,505	\$ 250	\$ 7,755	\$ 7,249	\$ 250	\$ 7,499	\$ 15,255	\$ 1,927	\$ 66	\$ 1,993	\$ 9,493	\$ 17,248
Libby	\$ 3,057	\$ 200	\$ 3,257	\$ 1,530	\$ 200	\$ 1,730	\$ 4,987	\$ 432	\$ 56	\$ 488	\$ 2,218	\$ 5,475
Little Goose	\$ 2,145	\$ 200	\$ 2,345	\$ 2,682	\$ 200	\$ 2,882	\$ 5,227	\$ 193	\$ 14	\$ 207	\$ 3,089	\$ 5,434
Lookout Point-Dexter	\$ 1,385	\$ 100	\$ 1,485	\$ 1,321	\$ 100	\$ 1,421	\$ 2,906	\$ 2,348	\$ 178	\$ 2,526	\$ 3,947	\$ 5,431
Lost Creek	\$ 1,096	\$ 100	\$ 1,196	\$ 316	\$ 100	\$ 416	\$ 1,611	\$ 2,690	\$ 852	\$ 3,542	\$ 3,958	\$ 5,154
Lower Granite	\$ 2,301	\$ 200	\$ 2,501	\$ 4,045	\$ 200	\$ 4,245	\$ 6,746	\$ 29	\$ 1	\$ 30	\$ 4,275	\$ 6,776
Lower Monumental	\$ 2,272	\$ 200	\$ 2,472	\$ 2,781	\$ 200	\$ 2,981	\$ 5,453	\$ 203	\$ 15	\$ 217	\$ 3,198	\$ 5,671
McNary	\$ 4,937	\$ 250	\$ 5,187	\$ 5,901	\$ 250	\$ 6,151	\$ 11,338	\$ 1,357	\$ 58	\$ 1,415	\$ 7,566	\$ 12,753
The Dalles	\$ 7,959	\$ 250	\$ 8,209	\$ 3,396	\$ 250	\$ 3,646	\$ 11,855	\$ 1,321	\$ 97	\$ 1,418	\$ 5,064	\$ 13,273
Totals	\$61,134	\$3,000	\$64,134	\$46,866	\$3,000	\$49,866	\$114,000	\$19,422	\$2,515	\$21,937	\$71,803	\$135,937

FY 2002 Annual Power Budget Total	<u>\$114,000</u>	Total Program	<u>\$135,937</u>
Notes <ul style="list-style-type: none"> Dollars in \$000 The Annual Power Budget can only be revised by the JOC. The estimated cost of a single piece of O&M power equipment shall not exceed \$200,000 for any Corps Project, unless agreed to by the JOC. 		Notes <ul style="list-style-type: none"> The data in this box is provided for informational purposes. 	

ANNUAL POWER BUDGET, FISCAL YEAR 2003

Project	Routine Power	Nonroutine Power	Subtotal	Routine Joint (BPA)	Nonroutine Joint (BPA)	Subtotal Joint (BPA)	Total BPA	Routine Joint (APPR)	Nonroutine Joint (APPR)	Subtotal Joint (APPR)	Subtotal Joint	Total BPA+ APPR
Albeni Falls	\$ 1,583	\$ 100	\$ 1,683	\$ 1,694	\$ 100	\$ 1,794	\$ 3,477	\$ 35	\$ 2	\$ 37	\$ 1,831	\$ 3,514
Bonneville 1	\$ 4,292	\$ 100	\$ 4,392	\$ 4,555	\$ 100	\$ 4,655	\$ 9,046	\$ 4,555	\$ 100	\$ 4,655	\$ 9,309	\$ 13,701
Bonneville 2	\$ 2,539	\$ 100	\$ 2,639	\$ 1,923	\$ 100	\$ 2,023	\$ 4,662			\$ 0	\$ 2,023	\$ 4,662
Chief Joseph	\$12,727	\$ 250	\$12,977	\$ 1,154	\$ 250	\$ 1,404	\$ 14,381			\$ 0	\$ 1,404	\$ 14,381
Cougar	\$ 500	\$ 100	\$ 600	\$ 194	\$ 100	\$ 294	\$ 894	\$ 802	\$ 413	\$ 1,215	\$ 1,509	\$ 2,109
Detroit-Big Cliff	\$ 1,494	\$ 100	\$ 1,594	\$ 772	\$ 100	\$ 872	\$ 2,466	\$ 757	\$ 98	\$ 855	\$ 1,727	\$ 3,321
Dworshak	\$ 1,634	\$ 100	\$ 1,734	\$ 4,223	\$ 100	\$ 4,323	\$ 6,058	\$ 841	\$ 20	\$ 861	\$ 5,184	\$ 6,918
Green Peter-Foster	\$ 1,382	\$ 100	\$ 1,482	\$ 884	\$ 100	\$ 984	\$ 2,466	\$ 1,102	\$ 125	\$ 1,227	\$ 2,211	\$ 3,693
Hills Creek	\$ 525	\$ 100	\$ 625	\$ 117	\$ 100	\$ 217	\$ 842	\$ 429	\$ 365	\$ 794	\$ 1,012	\$ 1,636
Ice Harbor	\$ 2,933	\$ 200	\$ 3,133	\$ 2,781	\$ 200	\$ 2,981	\$ 6,114	\$ 757	\$ 54	\$ 812	\$ 3,792	\$ 6,925
John Day	\$ 7,896	\$ 250	\$ 8,146	\$ 7,425	\$ 250	\$ 7,675	\$ 5,820	\$ 1,974	\$ 66	\$ 2,040	\$ 9,715	\$ 17,860
Libby	\$ 3,167	\$ 200	\$ 3,367	\$ 1,585	\$ 200	\$ 1,785	\$ 5,152	\$ 447	\$ 56	\$ 503	\$ 2,288	\$ 5,656
Little Goose	\$ 2,222	\$ 200	\$ 2,422	\$ 2,770	\$ 200	\$ 2,970	\$ 5,392	\$ 199	\$ 14	\$ 213	\$ 3,183	\$ 5,605
Lookout Point-Dexter	\$ 1,462	\$ 100	\$ 1,562	\$ 1,395	\$ 100	\$ 1,495	\$ 3,056	\$ 2,479	\$ 178	\$ 2,657	\$ 4,152	\$ 5,713
Lost Creek	\$ 1,135	\$ 100	\$ 1,235	\$ 327	\$ 100	\$ 427	\$ 1,662	\$ 2,786	\$ 852	\$ 3,638	\$ 4,065	\$ 5,300
Lower Granite	\$ 2,383	\$ 200	\$ 2,583	\$ 4,183	\$ 200	\$ 4,383	\$ 6,965	\$ 29	\$ 1	\$ 31	\$ 4,414	\$ 6,996
Lower Monumental	\$ 2,353	\$ 200	\$ 2,553	\$ 2,874	\$ 200	\$ 3,074	\$ 5,628	\$ 210	\$ 15	\$ 224	\$ 3,299	\$ 5,852
McNary	\$ 5,131	\$ 250	\$ 5,381	\$ 5,858	\$ 250	\$ 6,108	\$ 11,489	\$ 1,347	\$ 58	\$ 1,405	\$ 7,513	\$ 12,894
The Dalles	\$ 8,375	\$ 250	\$ 8,625	\$ 3,554	\$ 250	\$ 3,804	\$ 12,429	\$ 1,382	\$ 97	\$ 1,479	\$ 5,283	\$ 13,908
Totals	\$63,733	\$3,000	\$66,733	\$48,267	\$3,000	\$51,267	\$118,000	\$20,130	\$2,515	\$22,645	\$73,913	\$140,645

FY 2003 Annual Power Budget Total	<u>\$118,000</u>	Total Program	<u>\$140,645</u>
Notes <ul style="list-style-type: none"> Dollars in \$000 The Annual Power Budget can only be revised by the JOC. The estimated cost of a single piece of O&M power equipment shall not exceed \$200,000 for any Corp Project, unless agreed to by the JOC. 		Notes <ul style="list-style-type: none"> The data in this box is provided for informational purposes. 	

PERFORMANCE INDICATORS

(To be developed by JOC)

- 1. PERFORMANCE OBJECTIVES**
- 2. PERFORMANCE INDICATORS**

(PBLLAN-PGF-W:\PGF\PM\10211.DOC)

Appendix F

FCRPS System-wide Programmatic Agreement



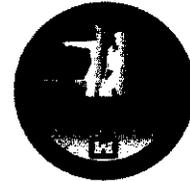
Department of Energy

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



OCT 16 2008

In reply refer to: KEC-4



Dear FCRPS Cultural Resource Program Participant:

The U.S. Army Corps of Engineers, the Bonneville Power Administration, and Bureau of Reclamation (Lead Federal Agencies) are pleased to enclose for your review a revised draft of the proposed Systemwide Programmatic Agreement (PA) for the management of historic properties affected by the multi-purpose operations of the fourteen dam/reservoir Projects comprising the Federal Columbia River Power System (FCRPS). The PA provides the systemwide principles and commitments for the Lead Federal Agencies' compliance with Section 106 of the National Historic Preservation Act (NHPA).

This proposed agreement has been under development for over 10 years following commitments made by the agencies in Records of Decisions issued in 1997 following the analysis of the System Operation Review (SOR) Environmental Impact Statement. As a part of the SOR process, the agencies found that Project operations have the potential to adversely affect and may continue to threaten historic properties (including cultural resources) eligible for the National Register of Historic Places. The Lead Federal Agencies circulated a draft PA at that time for review and comment, but were not able to finalize it for signature.

The Lead Federal Agencies developed this draft of the PA in cooperation and consultation with tribes, state and tribal historic preservation officers (SHPOs/THPOs), the Advisory Council on Historic Preservation (ACHP), federal land managing agencies and other interested parties. An initial, informal draft of the PA was first circulated for comment during March 2005, with comments incorporated into a second draft that was formally coordinated with all interested parties by letter dated October 31, 2005. Written comments were received up through January 2006.

The draft before you is the first draft that the ACHP has helped formulate based on their comments and review of the previous draft. This draft represents the collective thinking of the Lead Federal Agencies and ACHP for programmatic compliance with Section 106 for operation of the 14 Projects, consistent with the ACHP's regulations. Now we are asking for your views on this draft PA.

The Lead Federal Agencies greatly appreciate the time and effort made to date by the tribes, SHPOs/THPOs and ACHP in providing feedback and suggestions on this most recent draft. Below we summarize the key points of the revised draft PA. Also enclosed is a record of how each of the written

comments received were addressed and a computer disk containing copies of comments received on the October 31, 2005 version of the draft PA.

The undertaking. We have clarified the NHPA Section 106 undertaking that is the subject of this PA: the coordinated implementation of the 14 Projects of the FCRPS for all the congressionally-authorized Project purposes (reservoir management and implementation of minor construction in support of operations), including future modifications to the operating regime for any or all of the Projects. See the fifth “Whereas” clause and the definition of “undertaking” in the glossary (Attachment 3). The undertaking subject to this PA is thus broader than the power operations of the FCRPS for which Bonneville provides its share of funding pursuant to the direct funding agreements between Bonneville and the Corps and Bonneville and Reclamation (see eighth “Whereas” clause). We also make clear that this PA addresses only Section 106 requirements of the agencies. Federal agency compliance with other NHPA requirements, and other federal statutes such as the Archaeological Resources Protection Act and 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. See Stipulation I.B.

Tiered approach. This PA provides the systemwide programmatic commitments of the Lead Federal Agencies for NHPA section 106 compliance. Our expectation is that there will be further Project-specific agreements developed in consultation and cooperation with interested parties that will provide site-specific details for identification, management, and treatment of historic properties. Based specifically on comments and concerns raised by the ACHP, the Lead Federal Agencies revised the PA to allow the option of producing either a Project-specific PA, a signed historic property management plan (HPMP), or both for Project-specific Section 106 compliance. See Stipulation I.C and Stipulation V. Because we consider a Project-specific PA and an HPMP to perform different functions, we anticipate that we will continue to prepare both documents for each Project. Nevertheless, we agreed with the ACHP to keep the option open to reduce duplication of compliance documents, and will consider doing one or the other in consultation with interested parties of each Project where it is reasonable and feasible to do so.

Area of Potential Effects (APE). Given that the definition of the area of potential effects of the undertaking, particularly in regards to downstream areas, remains a prominent issue, this PA provides a separate and distinct section on APE determinations. See Stipulation III. As indicated in that section, the Lead Federal Agencies will define the Project-specific portion of the APE in consultation with Project consulting parties. In response to multiple comments, we make clear that the APE will include lands directly or indirectly affected by the undertaking, regardless of land ownership, consistent with the NHPA.

Prioritization for Identification, Evaluation, and Treatment. Once the APE is defined, the next step is to identify, evaluate, and treat National Register eligible properties within the APE. Because of the scope and scale of the undertaking, it is not possible to complete such efforts all at once, so some prioritization must occur. Based on on-going practice and experience, and the comments received in development of this PA, we describe the prioritization factors we will consider generally (Stipulation IV.A) in consultation with interested parties. In addition, we further indicate our expectations of what is *typically* going to be the priority (Stipulation IV.B), on a continuum, with the highest priority being to address lands or historic properties where the undertaking is the primary agent of adverse effect, the agency has or can readily gain access, and the public benefit will be highest, to those areas where the undertaking is not the primary agent and there are restrictions on the ability to access the property. As noted, this

prioritization is subject to further consultation in the Project-specific PAs, but we believe it is important to be clear up front about our expected approach.

Treatment approaches. In response to comments that we have been too focused on archeological data recovery, this draft PA makes clear that the Lead Federal Agencies will consider a wide range of options for mitigation and treatment of adverse effects as appropriate, including, but not limited to, site protection or stabilization; data recovery, historic or oral history research, and other non-invasive procedures. See Stipulation V.F.3 and V.F.5.

Tribal lands. In response to comments received, we have clarified that we will interpret “tribal lands” as defined by the NHPA to include lands held in trust for a tribe by the United States both internal and external to the boundaries of a reservation. See “tribal lands” in the glossary (Attachment 3). Note also that the provisions of any final PA can only be implemented on tribal lands with the express permission of that tribe.

Signatories. Although the PA can take effect without the signature of all the consulting parties, we want to encourage broad participation in this PA. As a result, as reflected in the signature block of this draft PA, we intend to invite all consulting parties to be signatories. (Signatory parties have the ability to request an amendment to the PA, see Stipulation XII, or may terminate the PA as applicable to their jurisdiction, see Stipulation XIV). In addition, comments indicated that some tribes would like to have two signatures, one for their THPO and one for the governing body of the tribe. To the extent tribal lands are involved and if a THPO has been designated, the THPO is the only required signature. Nonetheless, we welcome both THPO and tribal council signatures in support of the PA, and will make additional signature blocks for those tribes that request it. Some consulting parties, such as other federal agencies, may not wish to be signatory parties, and they may remain concurring parties if they so request.

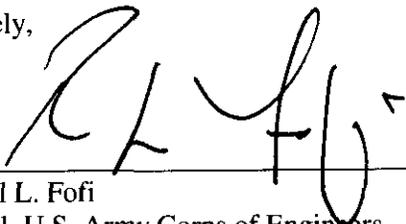
These are the key changes or adaptations of this version of the PA from prior drafts. As before, the PA includes provisions for consultation and coordination, annual review and reporting, criteria for preparation of documents, schedules for completion, and provisions regarding dispute resolution, amendments, withdrawal, and effective date.

Please provide any comments or suggested edits to this PA within 90 days of the date of this letter. You may submit comments in a number of ways: by mail, address them to Tribal Affairs – DKT-7, P.O. Box 14428, Portland OR 97293-4428; by fax at 503-230-5884; or by e-mail to comment@bpa.gov. Please include with your comments the title “Draft FCRPS Systemwide PA” and indicate, if possible, whether or not you believe your agency or tribe expects to sign the PA when it is finalized. In an addition, comments received on this draft PA will be posted on Bonneville’s external web site at http://www.efw.bpa.gov/environmental_services/culturalresources.aspx unless you request that your comments not be posted. This site will be updated throughout the development of the PA.

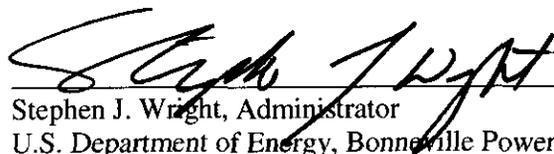
Through both written and verbal comments received during the last review of the draft PA, the agencies received requests for consultation, either government to government or technical level meetings. We are currently working through our agencies’ tribal liaisons to schedule these meetings. The ACHP has indicated an interest in participating in these consultation meetings as well. We are looking at the week of December 11, 2006 as a potential time to meet after you have had time to review the enclosed final draft.

Again, we thank you for your time and valuable input to the various drafts of this PA. If you have questions, please do not hesitate to contact our staff, Kimberly St. Hilaire, BPA Cultural Resource Manager, 503-230-5361, Lynne MacDonald, Bureau of Reclamation Regional Archeologist, 208-378-5316, or Gail Celmer, Corps of Engineers Regional Archeologist, 503-808-4762.

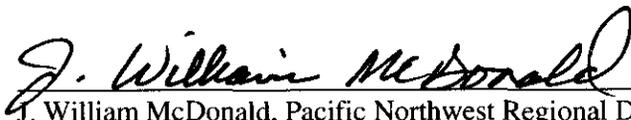
Sincerely,



Randall L. Fofi
Colonel, U.S. Army Corps of Engineers
Acting Division Commander, Northwestern Division



Stephen J. Wright, Administrator
U.S. Department of Energy, Bonneville Power Administration



J. William McDonald, Pacific Northwest Regional Director
U.S. Bureau of Reclamation.

Enclosures:

FCRPS Draft PA
Draft PA Comment/Response Spreadsheet
CD of Comments received on Oct. 21, 2005 Draft PA

**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.
- B. 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.

- C. 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:
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.
- 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.
 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.
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.
 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.
 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.).
 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 identification of historic properties, and development of appropriate feasible and cost effective treatment or mitigation measures when adverse effects on historic properties will occur.
 8. Define procedures in the Project-specific PAs or HPMPs to address emergencies and inadvertent discoveries of historic properties associated with the undertaking.
- 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.
- 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.

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.
4. The promotion and use of collections for education and research purposes, consistent with 36 C.F.R. § 79.10.
5. Consideration of actions that seek to protect historic properties so the resources remain available for future generations.
6. Expansion of opportunities for heritage tourism using information and resources generated from actions to implement this PA.

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 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.

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).
- 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.

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
- 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.

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.
 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.

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.

- 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;
 2. Contain a list of historic properties, with their National Register eligibility status indicated and available information about them;
 3. Define temporal range, geographic scope, and property types for each theme;
 4. Synthesize theoretical models presented in the past;
 5. Identify any data gaps and research opportunities; and
 6. Identify systemwide public outreach, education, and heritage tourism opportunities.
- 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 at a minimum it will address archeological, ethnographic, TCP, and historic period research domains.
- 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.

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.

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 decisionmaking 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.
- 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.¹ The Cooperating Groups serve as a regular forum in support of intergovernmental communications for the purpose of exchanging views, technical

¹ 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.

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.
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 decisionmaking 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

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(l)(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.

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.

APPENDIX G

INSTRUMENTS THAT DEFINE THE FEDERAL COLUMBIA RIVER POWER SYSTEM CULTURAL RESOURCE MANAGEMENT PROGRAM

BPA, Reclamation, and the U.S. Corps of Engineers implement a coordinated program to address the effect on historic properties from operation of the 14 Federal Columbia River Power System reservoirs. The agencies' authority to act, and the goals and processes used to define the scope of the coordinated cultural resource program, lie within the requirements of Section 106 of the National Historic Preservation Act. The legal instruments listed below influence program definition, consultation, and implementation processes.

FCRPS Agreement Documents

- Columbia River System Operation Review Final Environmental Impact Statement Records of Decision (1997) (SOR EIS RODS)
- Direct Funding of Power Operations and Maintenance Costs at Reclamation (1996) and Corps of Engineers Projects (1997) (DFAs)
- Intertie Development and Use Programmatic Agreement for Federal Columbia River Power System Hydroelectric Operations (1991) (IDU PA)
- Letter of Agreement for Direct Funding Cultural Properties Management Costs at Reclamation Projects (1997)
- Letter of Agreement for Direct Funding Cultural Properties Management Costs at Corps Projects (1998)
- Memorandum of Agreement between the Bureau of Reclamation and Bonneville Power Administration for Mutually Agreed Upon Historic Properties Investigations at Lake Roosevelt and Hungry Horse Reservoirs (2003)
- Memorandum of Agreement between the U.S. Army Corps of Engineers and Bonneville Power Administration to Cooperate in Historic Properties Management at Albeni Falls, Bonneville, Chief Joseph, Dworshak, Ice Harbor, John Day, Libby, Little Goose, Lower Granite, Lower Monumental, McNary, and The Dalles Projects (Draft 2005)
- Programmatic Agreement Among the U.S. Army Corps of Engineers, Northwestern Division, Bureau of Reclamation, Pacific Northwest Region, Bonneville Power Administration and the Advisory Council on Historic Preservation Regarding the Management of Historic Properties Affected by the Multi-Purpose Operations of the Fourteen Projects of the Federal Columbia River Power System (Draft 2005)

Federal Law

- National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) (NHPA)

- Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 479) (AHPA)
- American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996) (AIRFA)
- Archaeological Resources Protection Act of 1979 (16 U.S.C. 470) (ARPA)
- Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001) (NAGPRA)

Associated Regulations

- Protection of Historic Properties – 36 CFR 800
- National Register of Historic Places – 36 CFR 60
- Determinations of Eligibility for Inclusion in the National Register of Historic Places—36 CFR 63
- Protection of Archaeological Resources – 43 CFR 7
- Curation of Federally Owned and Administered Archaeological Collections—36 CFR 79
- Native American Graves Protection and Repatriation Act; Final Rule—43 CFR 10

Executive Orders

- Indian Sacred Sites – EO 13007

Federal Policy Statements

- Department of the Army — DOD 4710.1, Archaeological and Historic Resources Management
- Department of the Interior — 519 DM 1, Protection of the Cultural Environment
519 DM 2, Preservation of American Antiquities
411 DM, Museum Property Management
- Department of Energy, Management of Cultural Resources--DOE P 141.1
- Bureau of Reclamation — Manual Policy Statement LND-P01, Cultural Resource Management, supplemented by LND 02-01 Directives and Standards for Cultural Resource Management
LND-07-01, Inadvertent Discovery of Human Remains on Reclamation Lands

Instruments that can influence or guide cultural resource program implementation are as

follows:

Federal Law

- National Environmental Policy Act (NEPA) of 1969

Executive Orders

- Coordination and Consultation with Indian Tribal Governments – EO 13175

Executive Memoranda

- Government-to-Government Relations with Native American Tribal Government, dated April 29, 1994

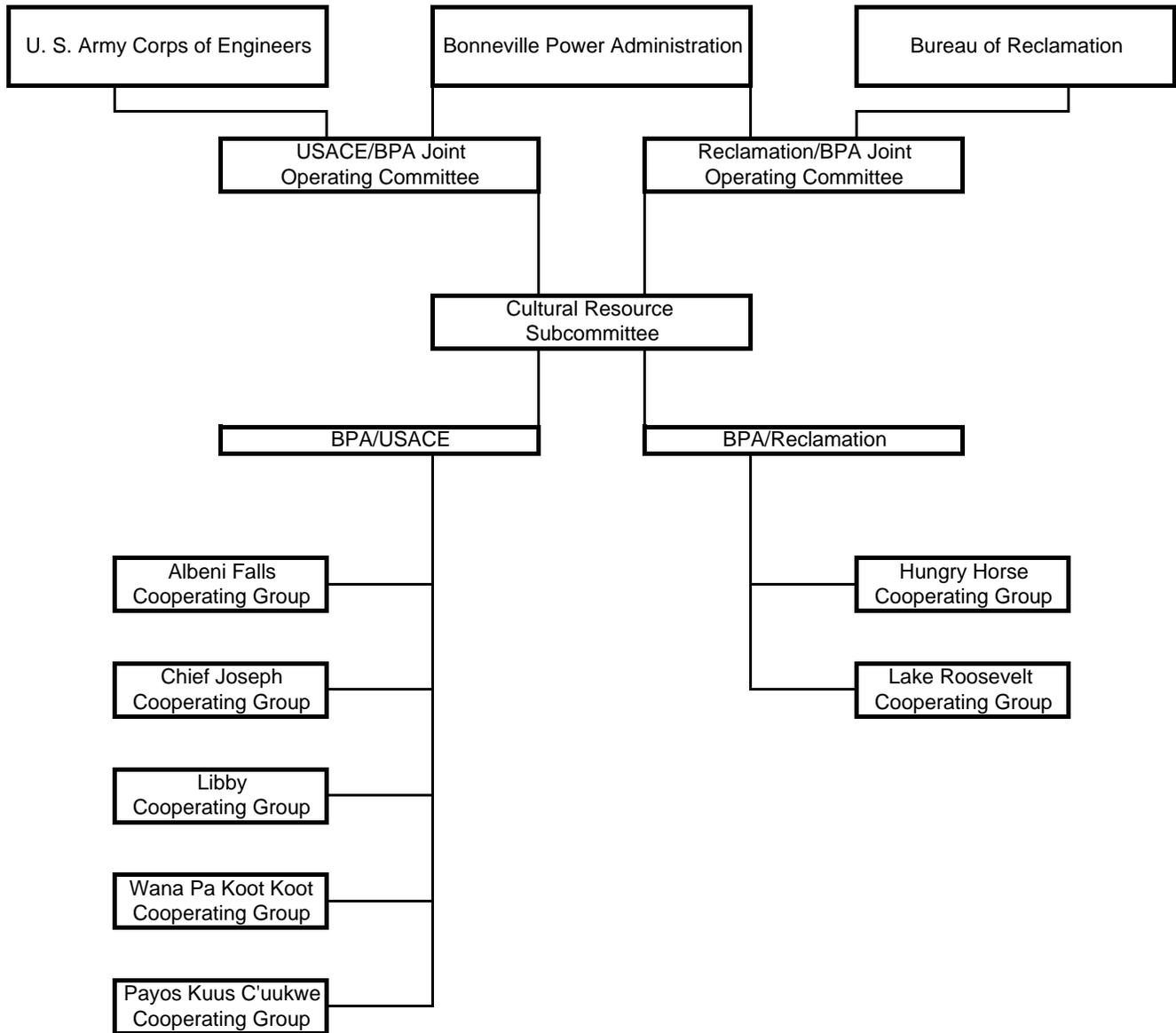
Tribal Ordinances: when working on reservation lands, tribal ordinances may shape permitting, access, documentation format, and information distribution requirements. Employment preferences or TERO requirements may also apply.

Other Agency Policy: when working on land under the management jurisdiction of another Federal, State, or local government agency, its policies and procedures may shape permitting, access, documentation format, and information distribution requirements

State Laws: Several western states have passed environmental and cultural resource laws that are relevant to the FCRPS Cultural Resources management and may come into play during the Section 106 consultation that takes place between the agencies and the states.

APPENDIX H

FCRPS Cultural Resource Program INTERAGENCY RELATIONSHIP



Appendix I

Bureau of Reclamation and BPA MOA 2003
Corps of Engineers and BPA MOA 2006

PN-
6514
8/28/03

MEMORANDUM OF AGREEMENT

Number 1425-03-MA-10-3830

between

BUREAU OF RECLAMATION

and

BONNEVILLE POWER ADMINISTRATION

for

**MUTUALLY AGREED UPON HISTORIC PROPERTIES INVESTIGATIONS AT
LAKE ROOSEVELT AND HUNGRY HORSE RESERVOIR**

I. BACKGROUND

1. Agreement

Bureau of Reclamation ("Reclamation") and Bonneville Power Administration ("BPA") have committed to complete mutually agreed-upon actions to address responsibilities under Section 106 of the National Historic Preservation Act, to address the effects of reservoir operations upon historic properties at Lake Roosevelt and Hungry Horse Reservoir. This Memorandum of Agreement ("MOA") serves to define the relationship between the two parties, and to give policy and direction to their collective responsibilities for historic properties at Lake Roosevelt and Hungry Horse Reservoir.

2. Historical Properties Investigations Documents

Actions to address operational effects of reservoir operations on historic properties are defined in two documents:

- a. Intertie Development Unit Programmatic Agreement ("IDU PA") otherwise known as the Programmatic Agreement for the Federal Columbia River Power System Hydroelectric Operations (finalized November 27, 1991); and

- b. System Operation Review, Records of Decision, Columbia River System Final Environmental Impact Statement ("SOR RODS")(Reclamation, February 7, 1997; BPA, February 21, 1997).

3. Funding Documents and Agreements

The funding for the joint historical properties investigations at Lake Roosevelt and Hungry Horse Reservoir is guided by two documents:

- a. Memorandum of Agreement 1425-6-AA-10-1150/Bonneville Contract No. 96MS-95129, otherwise known as the Direct Funding Agreement ("DFA"), effective September 30, 1996 and continuing until September 30, 2006, and an associated concurrence letter on Direct Funding Cultural Properties Management Costs, dated December 19, 1997, provide terms under which BPA will fund operation and maintenance items at the power facilities at certain Reclamation projects; and
- b. Interagency Acquisition 1425-03-AA-10-3480 ("IA"), effective April 16, 2003 and continuing until March 1, 2008, which supplements but does not replace the DFA, and serves as the business instrument for BPA to transfer direct funding amounts from BPA to Reclamation.

A prior agreement between the parties, Memorandum of Agreement 1425-8-MA-10-2260 ("Prior MOA") expired on December 31, 2001. The Prior MOA served as a mechanism for fund transfers from Reclamation to BPA for mutually agreed-upon cultural properties management actions at the subject reservoirs. Because Reclamation policy requires an interagency acquisition for funds transfer, the Prior MOA has been replaced by the IA beginning in fiscal year 2003.

II. PURPOSE

This agreement, Memorandum of Agreement 1425-30-MA-10-3830 ("MOA"), is effective upon Reclamation's signature and continuing until September 30, 2006. The purpose of this MOA is to define the relationship between the two agencies and to give policy and direction to their collective responsibilities for historic properties investigations at Lake Roosevelt and Hungry Horse Reservoir.

III. RESPONSIBILITIES

1. Together, Reclamation and BPA responsibilities:

Work together to plan both near- and long-term cultural resource management planning at the subject reservoirs. The main participant for Reclamation is the Power Office Archaeologist, and the main participants for BPA are the Contracting Officer's Representative and the BPA Staff Archaeologist.

These individuals will work cooperatively to: (1) implement Historic Property Management Plan goals in the annual and five-year planning process; (2) develop contract statements of work for specific tasks; (3) review contract proposals and select contractors; (4) monitor work performance and adjust contracts as needed; (5) determine the acceptability of contract deliverables. Contract deliverables will consist of the draft and final technical reports or other deliverables defined in the historic property management contract statements of work.

2. Reclamation responsibilities:

Reclamation will participate in the Reservoir Cooperating Groups to define historic property actions to address the commitments of the IDU PA and SOR RODs. In emergency situations, such as an inadvertent discovery of human remains or potentially significant historic properties, or an unanticipated change in funding, Reclamation will notify BPA by telephone, e-mail or fax within 24 hours. Reclamation will provide written comments to reports, and other documents as requested, within 30 days of receipt.

3. BPA responsibilities:

BPA will take the lead in procurements for historic property management actions implementing the IDU PA or the SOR RODs. BPA will unilaterally perform routine contract administrative functions. BPA will organize and participate in the Reservoir Cooperating Groups to define appropriate historic property management actions. With Reclamation's concurrence, BPA may also use shared funds to organize and implement meetings or symposia between interested parties, or fund participation by interested parties.

BPA will notify Reclamation within 14 days of any delays, funding transfers or changes in contract status. In emergency situations, such as an inadvertent discovery of human remains or potentially significant historic properties, or an unanticipated change in funding, BPA will notify Reclamation by telephone, e-mail or fax within 24 hours.

4. Reports

BPA will file the following reports with Reclamation listed below as required under the IA:

Report	Due Date
Annual Summary for Each Contract	Jun. 1st
Quarterly Financial Spreadsheet showing actual and estimated expenditures by issued contract	Oct. 30, Jan. 30, Apr. 30, and Jul. 30
Annual Proposed Budget, signed and issued to contractors	Nov. 15th
Monthly Contractor Progress Reports	Last day of each month
Copies of Contractor Reports	Within 30 days of delivery to BPA
Annual Expenditure Report for FY Completed	Nov. 15

5. Funding

Funding for the joint investigations for historical properties will be accomplished through the IA and subsequent modifications thereto, under the guidelines of the DFA.

III. PROVISIONS

1. Term

This MOA will be in force from the date of last signature hereto, and continue until September 30, 2006.

2. Modifications

This MOA may be revised as necessary by mutual consent of the parties and by issuance of a written modification signed and dated by both parties. Modification of this MOA shall not modify the terms of the DFA and the IA.

3. Conflicting Provisions

If provisions of this MOA conflict with any terms or provisions in the DFA and the IA, the terms of the DFA and IA shall prevail.

4. Dispute Resolution

If disagreements occur between BPA and Reclamation, or between the agencies and the Reservoir Cooperating Groups, concerning the appropriateness or priority of historic property management actions, the agencies will resolve the disagreements using the dispute resolution process provided in the DFA.

5. Termination

Reclamation or BPA may terminate this MOA after giving 30 days advance written notice of its intent to terminate. If the reason for termination is dispute, the terminating agency must first exhaust the dispute resolution procedures in the DFA. BPA will terminate all contracts and Reclamation will reimburse BPA for contract costs incurred for commitments applicable to this MOA which BPA, after exercising due diligence, is unable to cancel. Termination of this MOA shall not terminate the DFA and the IA.

6. Limitation on Funding

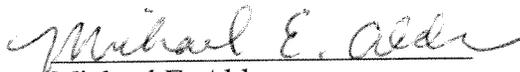
Nothing herein shall or shall be construed to obligate the Bureau of Reclamation to expend or involve the United States of America in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for the purposes and projects contemplated hereunder.

7. Conflict of Interest

No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this MOA or to any benefit that may arise out of it.

Signatures:

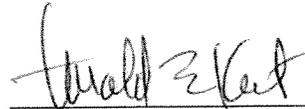
Bonneville Power Administration



Michael E. Alder
Joint Operating Committee

8/20/03
Date

Bureau of Reclamation



Terry Kent
Joint Operating Committee

8/12/03
Date

---End of Document---

MEMORANDUM OF AGREEMENT
between the
U. S. ARMY CORPS OF ENGINEERS, NORTHWESTERN DIVISION
and
BONNEVILLE POWER ADMINISTRATION
to
COOPERATE IN
HISTORIC PROPERTIES ("CULTURAL RESOURCES") MANAGEMENT FOR
THE JOINT FCRPS PROGRAM AT ALBENI FALLS, BONNEVILLE, CHIEF
JOSEPH, DWORSHAK, ICE HARBOR, JOHN DAY, LIBBY, LITTLE GOOSE,
LOWER GRANITE, LOWER MONUMENTAL, MCNARY, AND THE DALLES
PROJECTS

1. BACKGROUND

The U.S. Army Corps of Engineers (Corps) and Bonneville Power Administration (BPA) have committed to complete mutually agreed-upon actions to address responsibilities under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, for the effects of reservoir operation upon historic properties at the Albeni Falls, Bonneville, Chief Joseph, Dworshak, Ice Harbor, John Day, Libby, Little Goose, Lower Granite, Lower Monumental, McNary, The Dalles dams and their reservoirs (hereafter "Projects"). Project lands are managed by the Corps, Portland District, Seattle District and Walla Walla District. Actions to address operational effects are defined in the Programmatic Agreement (PA) for the Federal Columbia River Power System Hydroelectric Operations (finalized November 27, 1991), hereafter called the Intertie Development and Use Programmatic Agreement (IDU PA), and in the Records of Decision (RODs) issued by the Corps and BPA regarding the Columbia River System Operation Review Final Environmental Impact Statement (Corps, February 20, 1997; BPA, February 21, 1997). Actions to address operational effects are also defined in the proposed Programmatic Agreement Among the U.S. Army Corps of Engineers, Northwestern Division, Bureau of Reclamation, Pacific Northwest Region, Bonneville Power Administration, and the Advisory Council on Historic Preservation Regarding the Management of Historic Properties Affected by the Multi-Purpose Operations of the Fourteen Projects of the Federal Columbia River Power System (hereafter called the FCRPS PA). The FCRPS PA (when executed), as well as the IDU PA and the SOR RODs are incorporated by reference into this MOA.

The Corps, BPA and Bureau of Reclamation's commitment to work cooperatively to fund activities addressing Section 106 NHPA compliance for operational effects of the FCRPS grew out of the System Operation Review (SOR) Environmental Impact Statement process in 1996. Subsequently, the cultural resources funding for Corps Projects was managed through the December 5, 1997 agreement entitled "Direct Funding of Power Operations and Maintenance Costs at Corps Projects" (Document No. 98PB-10211), hereafter called the DFA, and an associated concurrence letter on Direct Funding Cultural (sic) Properties Management costs signed in 1998. Following the SOR Records of Decision, the Corps and BPA agreed to make available to the program a maximum of

\$3 million per annum for an initial phase of 15 years. The agencies were then to assess the status of Section 106 compliance in order to plan for on-going program needs. In 2005, the agencies concluded that program execution was proceeding more slowly than expected and that there should be no time limit placed on expenditure of the \$45 million program at the Corps Projects. Therefore, the Corps and BPA are committed to providing \$45 million until expended for historic properties management at the Corps Projects. Before these funds are exhausted, the agencies will plan for future program needs (see Para. 4.a). Similar adjustments may occur at the Reclamation reservoirs, if needed, but are not addressed in this MOA.

2. OBJECTIVE

The objective of this Memorandum of Agreement (MOA) is to define the roles and responsibilities of the two agencies in managing the previously agreed to joint funding for compliance with Section 106 of the NHPA at the twelve aforementioned Corps dams and reservoirs. Because the funding commitment developed in the SOR process only addressed Columbia and Snake River FCRPS Projects, the Willamette Valley and Rogue Valley hydropower projects (Cougar, Detroit-Big Cliff, Green Peter-Foster, Hills Creek, Lookout Point-Dexter, and Lost Creek) and projects in Hells Canyon and the Snake River plain are expressly not included under the terms of this MOA.

The guiding principle of this MOA is that the agencies are partners in achieving their goals for Section 106 compliance and efficient operation of the joint hydropower generation program, and that the agencies should strive to jointly define the goals as well as the work needed to meet those goals.

3. STATEMENT OF WORK

Activities to be performed by CORPS and BPA:

Corps and BPA will jointly:

- Develop one year and five year action plans for each Project, in consultation with Project Cooperating Groups;
- Develop statements of work for historic properties management activities;
- Review contractor professional qualifications (Corps makes the selection, but will seek the recommendations of BPA);
- Review documentation for historic properties management activities and conduct in-house review of Project draft technical reports;
- Provide staff and resources for activities of the agencies' Cultural Resources Subcommittee (CRSC) of the Joint Operating Committee (JOC); and

- Assign the Corps Northwestern Division FCRPS Cultural Resource Program Manager and the BPA Cultural Resource Program Manager as Co-Chairs of the CRSC.¹

Deliverables:

Deliverables	Responsible Party/Schedule
Monthly Financial Spreadsheet (to include obligations and expenditures by Project and by District)	CRSC Co-Chairs to provide to JOC at scheduled JOC meetings.
Next Fiscal Year Annual Proposed Budget (to include total funds recommended for each Project)	CRSC Co-Chairs will review District submittals and provide final proposed budget to JOC on April 15 annually
Contractor Progress Reports from Corps Acquisitions	Corps will ensure that contractor progress reports are provided to BPA within 30 days of delivery to Corps.
Contractor Technical Reports	Corps will provide draft reports to BPA for review within 30 Days of delivery to Corps; Corps will provide a copy of all final reports to BPA within 30 days of delivery to Corps.
Comments on Draft Reports and Statements of Work	BPA will provide technical comments on draft reports and statements of work within 30 days of receipt of documents from Corps
Annual Expenditure Report for previous Fiscal Year (to include total obligations and expenditures by Project)	Corps CRSC Co-Chair will provide to BPA on October 15 annually

Activities to be performed by CORPS:

- The Corps shall be responsible for acquiring services and has sole responsibility for administering awarded acquisitions for historic property management actions on Corps managed lands.
- The Corps shall have ultimate control over contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of work under its contracts.

CRSC members from the respective Corps Districts and Northwestern Division will participate in the Project Cooperating Groups (Albeni Falls, Libby, Chief Joseph, Payos Kus Cukwe, and Wana Pa Koot Koot). CRSC members will ensure these groups meet regularly and will participate in the Cooperating Groups'

¹ Cultural Resources Subcommittee of the Joint Operating Committee is chaired by three Co-Chairs, one each from BPA, Corps, and Bureau of Reclamation.

meetings in order to define and recommend historic property management actions that are needed to carry out Section 106 compliance actions consistent with the IDU PA, the SOR RODs, and the FCRPS PA. It is the responsibility of the Corps to ensure compliance with the Federal Advisory Committee Act and the Corps will ensure that the Project Cooperating Groups meet applicable standards, e.g., section 204(b) of the Unfunded Mandates Reform Act of 1995, Pub. Law. No. 104-4.

- In an emergency situation (such as inadvertent discoveries of human remains or potentially significant historic properties, or unanticipated funding needs), the Corps will notify BPA by telephone, e-mail, or fax within two business days. Notification will normally occur between the affected Corps District CRSC member and a BPA CRSC member.

Activities to be performed by BPA:

- CRSC members from BPA will participate in the meetings of the Project Cooperating Groups to help identify appropriate historic property management actions consistent with the IDU PA, the SOR RODs, and the FCRPS PA. It is also the responsibility of BPA to ensure compliance with the Federal Advisory Committee Act and BPA will ensure that the Project Cooperating Groups meet applicable standards, e.g., section 204(b) of the Unfunded Mandates Reform Act of 1995, Pub. Law. No. 104-4.
- BPA may make recommendations to the Corps on budget proposals for cultural resources contracts.

4. FUNDING

a. **Level and Source:** In 1997, BPA and Corps agreed to provide a maximum annual joint fund allocation of approximately \$3 million comprised of \$2.5 million direct-funded power portion (BPA) and \$500,000 appropriated non-power portion (Corps) Allocation of this funding was initiated in fiscal year 1999 and will continue until a total of \$45 million is expended. The overall goal of the joint funding commitment is to address historic property management actions under Section 106 of the NHPA for operations of the 12 FCRPS Projects. This funding is “fenced off” from other joint funding commitments between BPA and the Corps, and will be referred to in this MOA as “fenced” joint funding. BPA and the Corps expect that the \$45 million commitment will address many of the needs for section 106 responsibilities for the 12 Projects. Remaining or continuing funding needs will be addressed in a future MOA. BPA and the Corps agree to discuss any such future MOA needs at least two years prior to the completion of this MOA.

b. **Transferring:** Funding for this agreement is managed under the terms of the DFA and Corps annual appropriations procedures. BPA power direct funding will be transferred to the Corps on October 1 annually prior to the Corps contribution of the appropriated non-power portion. Subject to availability of appropriated funds, the Corps will make

sufficient appropriated funds available by October 1 to allow timely award of contracts. Timing and availability of funds may vary each year, and nothing in this MOA shall be construed as obligating the participating parties to expend, or involve the United States in any obligation for future payment of money in excess of appropriations authorized by law and administratively allocated for these purposes, or in excess of that agreed to pursuant to the annual DFA budget.

c. **Application:** Fenced joint funds (the \$3 million program composed of BPA direct-funded power portion and Corps appropriated non-power portion) will be used to conduct historic properties management compliance activities under Section 106 of the NHPA as jointly agreed to by the agencies to address the effects of the operation and maintenance of the aforementioned 12 Corps Projects. Fenced joint funds are intended for Section 106 compliance activities on all Corps fee-owned lands and other real property where the U.S. Government has a current and future legal interest, within project boundaries. Also, fenced joint funds may be used to address the effects of Project operations on downstream areas, when these impacts can clearly be tied to Project operations and when consistent with agency legal requirements. Curation as an outcome of a Section 106 compliance action is included in the fenced category of joint costs.

Fenced joint funds shall not be used for non-joint, or other historic property management activities. These activities include but are not necessarily limited to:

- new construction requiring special administrative or legislative approval (Construction General and large capital projects);
- construction of habitat restoration projects under the Corps' Continuing Authorities Program, including 1135 projects;
- real estate actions such as maintenance of historic dams, surveys for outgrants and licenses, land acquisitions and excessions, restoration of areas outgranted to others;
- summaries, inventories, and repatriation under Sections 5, 6 and 7 of the Native American Graves Protection and Repatriation Act (NAGPRA)(activities funded directly by St. Louis District MCX);
- cemetery relocations, maintenance and establishment under all authorities;
- Section 10/404 Regulatory permits under Rivers and Harbors and Clean Water Acts;
- Archaeological Resources Protection Act permits for activities other than Section 106 NHPA compliance activities; other ARPA related activities, e.g., patrolling, monitoring, damage assessments, may be reviewed on a case by case basis for appropriate funding source;
- Recreation Activities, e.g., construction and maintenance of fences, signs, docks, trails, roads, beaches, restrooms and landscaping; and
- Navigation (non-joint activities)

Work related to inadvertent discoveries that are the result of the operation and maintenance of the 12 Projects that may come under section 3 of NAGPRA may be covered under BPA/Corps joint funding and this MOA. The Corps will provide notice to

BPA, and BPA will be advised of all activities pursuant to Section 3 and associated regulations and will be allowed to comment on such activities. BPA direct funding should be used only to make initial determinations as to applicability of the Act (i.e., whether remains and cultural items are Native American). Fenced joint funding can be used if the inadvertent discovery is determined not to be subject to NAGPRA (e.g., artifacts or cultural items exposed as a result of Project operation and maintenance).

Joint activities which do not clearly fall into the Section 106 category will be reviewed on a case-by-case basis by the co-chairs of the Cultural Resources Subcommittee of the Joint Operating Committee (CRSC) to recommend the proper direct funding category to the JOC.

d. Allocation: The Corps/BPA JOC has approval authority over the annual budget to implement the joint funding program for Section 106 activities described in this MOA (also known as the “FCRPS cultural resources budget”). The Corps/BPA CRSC Co-chairs review, approve and allocate annual funding at the Project level after approval by the JOC, consistent with the Direct Funding Agreement. Individual Project funding needs, in the form of an annual work plan, will be reviewed by the CRSC co-chairs in early April each fiscal year. CRSC Co-Chairs will forward a recommended final budget for the next fiscal year to the JOC by April 15th annually. Funds distribution among the 12 Projects varies annually based on specific needs and capability.

e. Obligations and Expenditures: The intent of the agencies is to expend funds in the most appropriate and effective manner each year up to \$3 million, and to minimize obligations that cannot be expended in a given fiscal year. The measurement criterion for the \$3 million is based on expenditures. There will be no carryover of unobligated funds from any program year. Funds obligated in a previous year that result in expenditures in a later fiscal year will count for measurement purposes against the overall \$45 million commitment and the \$3 million annual limit in the year the expenditures are recorded.

If the present year’s program does not expect to execute the maximum allotment of \$3 million then remaining funds unobligated will be returned to the JOC. Each district’s annual program must be contractually obligated for an approved Project activity by May 31 of that program year. Exceptions can be brought to the JOC for discussion. Any fenced joint cultural resources funds not contractually obligated in a district’s annual program will be made available to the JOC for prioritization prior to May 31 annually. Unobligated cultural resource funds, i.e. funds returned to the JOC, will not count against the program total of \$45 million.

5. DISPUTE RESOLUTION

If disagreements occur between Corps and BPA, concerning compliance with this MOA, including the need, extent, appropriateness, priority or funding of historic property management actions, the Agencies shall use their best efforts to resolve the dispute in an informal fashion, through consultation and communication or other forms of mutually acceptable nonbinding alternative dispute resolution. Disputes shall be raised first to the

CRSC, and if not resolved, then shall be addressed in accordance with Para. 9 of the DFA.

6. WAIVERS

The failure of either party to require strict performance of any term of this MOA or one party's waiver of performance shall not be a waiver of any future performance or of the party's right to require strict performance in the future.

7. NOTICE

Any notice permitted or required under Sections 5 and 9 of this MOA shall be in writing, delivered personally to the signators, or their successors, or shall be deemed given five days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed to the signators or their successors, or at such other address as may be specified by the parties to the other in writing. The Corps and BPA JOC Representatives are the primary contacts for all other formal correspondence.

8. NO UNSPECIFIED THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries of this MOA. Nothing contained in this MOA is intended to confer any right or interest on anyone other than the Corps and BPA, their respective successors and assigns.

9. MODIFICATIONS OR TERMINATIONS

This MOA may be revised as necessary by mutual consent evidenced by a written modification signed and dated by both parties.

Either party may terminate this MOA after giving to the other party 30 days advance written notice of its intent to terminate, including a proposal for how to address continuation or cancellation of existing service contracts and associated costs. If termination is disputed, or the reason for termination is a dispute, the terminating party must first exhaust the dispute resolution steps described in section 5 of this MOA. Unless terminated by 30 days written notice, this MOA will be in force from the date of last signature hereto, and will terminate with expenditure of the agreed upon \$45 million program.

Signatures:

U. S. Army Corps of Engineers

Bonneville Power Administration



Hiroshi Eto

Michael E. Alder

Joint Operating Committee

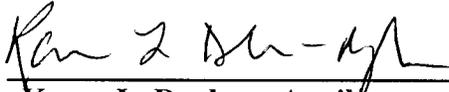
Joint Operating Committee

11 April 2006

4/13/06

Date

Date



Karen L. Durham-Aguilera
Director, Programs
Northwestern Division Corps of Engineers

Gregory K. Delwiche
Vice President, Environment, Fish and
Wildlife

11 April 2006

4/14/06

Date

Date

Appendix J

Letters of Agreement for Direct Funding Cultural
Properties Management Costs

BPA/USACE (1998)
BPA/Reclamation (1997)

DIRECT FUNDING CULTURAL PROPERTIES MANAGEMENT COSTS (Under Direct Funding of Power Operations and Maintenance Costs at Corps Projects)

1. Cultural Properties Subgroup

A Cultural Resources Subgroup of the Joint Operating Committee (JOC) has been created and is composed of one member each from the Corps and Bonneville. The Subgroup will:

- (a) Advise the JOC on costs associated with cultural properties management activities attributable to power and to multipurpose operation and maintenance on facilities included in the Direct Funding Agreement (DFA).
- (b) Serve as liaison between the respective Reservoir Cooperating Groups and the JOC.
- (c) Provide other assistance to the JOC as requested.

2. Cultural Properties Management Budget

- (a) Consistent with provisions of the DFA, by June 1 of each year the Cultural Properties Subgroup will submit budgets for cultural properties management activities to be included in the Corps' proposed Five-Year and Annual Power Budgets for JOC consideration (initially, here as Exhibits A and B, respectively). The budgets will identify both appropriated funds to be reimbursed by the power allocation (if any), as well as the direct-funded power allocation funds and respective non-power allocation funds. The budgets may also identify anticipated Corps administrative expenses. In preparing the budget submittal the Subgroup will consider the views of affected interests, especially Reservoir Cooperating Groups.
- (b) If actual cultural properties management costs are less than anticipated in a given Annual Budget, the remaining funds can be applied to the next cultural properties management priority(ies) within the next Five-Year Budget. Funds carried over do not contribute to the separate budget item referenced in paragraph 5(b)(3) of the DFA.
- (c) In collaboration with the Reservoir Cooperating Groups, the Cultural Properties Subgroup will develop procedures for determining appropriate allocation of funds among individual projects for cultural properties management joint costs, to be applicable beginning with the FY 2000 budget.

3. Contracting Cultural Properties Management

The following guidelines will be used in conjunction with the procurement of goods and services associated with management of cultural properties:

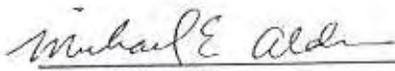
- (a) In most instances the Corps is the lead agency for purposes of achieving cultural properties compliance within the jurisdictional boundaries at Corps-administered reservoirs, consistent with legal and consultation requirements as well as with Corps procurement policies and procedures.

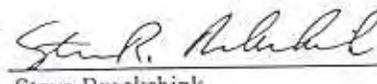
- (b) In the event the Corps, in collaboration with Bonneville, elects to procure goods and services through Bonneville's procurement procedures in accordance with existing authority, including 16 USC 832m, the Corps may initiate an Intergovernmental Agreement with Bonneville, specifying work to be performed, standards of performance, and expected costs consistent with the Annual Budget. Once approved by both agencies, Bonneville will execute the Intergovernmental Agreement.

4. Modification

This Letter of Agreement may be modified with the written agreement of the parties or terminated upon 90 days advance written notice to the other party.

EXECUTED BY:

 Date 11/10/98
Michael E. Alder
Joint Operating Committee
Bonneville Power Administration

 Date 11-10-98
Steve Brockshink
Joint Operating Committee
U.S. Army Corps of Engineers

202

DIRECT FUNDING CULTURAL PROPERTIES MANAGEMENT COSTS (under Direct Funding of Power Operations and Maintenance Costs at Reclamation Projects)

1. Cultural Properties Subgroup

(a) A Cultural Properties Subgroup shall be created, and each agency shall appoint up to three members to the Subgroup. The Subgroup shall advise the Joint Operating Committee (JOC) on costs associated with cultural properties management attributable to power and to multipurpose operation and maintenance on facilities included in the Direct Funding Agreement (DFA).

(b) Consistent with provisions of the DFA, by June 1 of each year the Cultural Properties Subgroup shall submit separate budgets for these activities to be included in Reclamation's proposed Five-Year and Annual Power Budgets for JOC consideration (initially, here as Exhibits A and B, respectively). In preparing budget submittals the Subgroup shall consider the views of affected interests, especially reservoir cooperating groups formed to collaborate on cultural properties management issues at Hungry Horse and Grand Coulee.

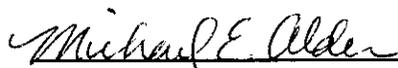
(c) If actual cultural properties management costs are less than anticipated in a given annual budget, the remaining funds can be reprogrammed to another year within the Five-Year Budget. Funds reprogrammed within this Five-Year Budget do not contribute to the separate budget item referenced in paragraph 9(b)(3) of the DFA.

2. Contracting Cultural Properties Management

(a) Where cultural properties management is proposed for contracting to a third party, the Cultural Properties Subgroup shall decide which agency should issue and administer the contract. Dispute resolution provisions of the DFA shall apply as needed.

(b) Where agreed that Bonneville should issue administer the contract, Reclamation shall initiate an Interagency Agreement (Exhibit C) to obligate the amount.

EXECUTED BY:

 Date: 12/3/97
Michael E. Alder
Joint Operating Committee
Bonneville Power Administration

 Date: 12/19/97
Steve Clark
Joint Operating Committee
Bureau of Reclamation

Appendix K

Cultural Resources Subcommittee Charter

Charter

Cultural Resources Subcommittee

Bonneville Power Administration

Bureau of Reclamation

U.S. Army Corps of Engineers

November 2004

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1.0 PURPOSE

This charter establishes the operating principles of the Cultural Resources Subcommittee (CRSC) of the Joint Operating Committee (JOC). The CRSC, comprised of three agencies, share management responsibilities for designing and implementing a program to address the adverse effects of operation of the Federal Columbia River Power System (FCRPS) on historic properties. CRSC provides a forum for Bonneville Power Administration (BPA), Bureau of Reclamation (BR) and the Corps of Engineers (COE) technical personnel to identify, discuss, and resolve historic properties program implementation issues. The main functions of the CRSC are as follows:

- Define long term goals and objectives for the program.
- Implement a system-wide historic properties management program which ultimately achieves compliance with legal requirements.
- Address unresolved reservoir-level program issues.
- Establish system-wide standards for work performance and products.
- Develop and manage performance indicators and tracking systems.
- Monitor annual program accomplishments.
- Develop and implement a system-wide Section 106 Programmatic Agreement that governs the program.
- Approve and allocate annual funding for system-wide and reservoir-level cultural resources activities.

2.0 PROCEDURES

The CRSC shall operate in a manner that is consistent with missions, operating plans, and legal authorities of the three agencies.

2.1 Membership.

The following represents the core standing membership of the CRSC:

- 3 Co-Chairs (One each from BPA, BR, and COE)
- 6 Agency Archeologists (BPA - 1, BR - 1, COE Portland District - 1, COE Walla Walla District - 1, COE Seattle District - 2)
- 5 Program Managers for FCRPS Cultural Resources Program (BPA -2, COE - 3)..
Note: One archeologist serves in the dual position of agency archeologist and program manager.
- 1 Attorney (Corps-NWD)

In addition to the standing members, other individuals may be invited to assist with specific issues relating to the mission of the CRSC. The Sub-committee members will discuss and approve invitation of others prior to their attendance at a given meeting.

2.2 Roles and Responsibilities

2.2.1 Sub-Committee Co-Chairs.

There are three co-chairs, each of whom also serves as the FCRPS cultural resources program manager for their respective agency. The co-chairs are responsible for approving, allocating, and tracking annual budgets; participating in JOC meetings for the purpose of communicating plans and activities for the cultural resources program; delegating tasks to subcommittee members; and resolving program issues at the project and system-wide level. The Co-Chairs are responsible for conducting meetings, and providing overall direction for the FCRPS cultural resources program.

2.2.2 Sub-Committee Members.

Sub-Committee members are the archeologists and project managers from the three agencies who are responsible for implementation of the cultural resources program at the FCRPS reservoirs. As standing members of the CRSC, members are responsible for contributing their individual and regional expertise to tasks assigned by the Co-Chairs and the JOC. The members are responsible for defining and achieving annual performance objectives, preparing written technical materials or oral presentations, and overseeing the seven project cooperating groups.

Members are expected to attend each scheduled meeting to facilitate communication and decision making, or to send an alternate.

2.3 Meetings

The CRSC will function as a working group and as such will adopt a flexible meeting process. Meetings will be held as frequently as necessary to conduct business, but not less than quarterly. Meetings will be supplemented by teleconferences, as required. The quarterly schedule will be determined by the Co-Chairs and provided to the CRSC members prior to the beginning of the fiscal year. The Co-Chairs will see that agendas are distributed one month prior to quarterly meetings with sufficient description of each item to identify responsibilities.

The goal of the CRSC is to reach all decisions by consensus. This will be done in an atmosphere that fosters full and open discussion and includes the sincere effort of each standing member to consider the views of the other members. If consensus is not reached by the full membership, the Co-Chairs may make a decision based upon consensus among them. If the sub-committee or Co-Chairs do not reach consensus, then the differing views will be presented to the JOC.

The CRSC shall designate one member as the note taker for each meeting. Note taker duties shall be rotated among the members. Draft notes, including action items, shall be disseminated to all members for review and comments. Records of all CRSC meetings shall be maintained in the BPA, BR and COE official files.

2.4 Action Items

The CRSC will maintain a list of pending action items and the member(s) responsible for completing them. The items will be reviewed at each work group meeting and the status of any key items will also be reported to the JOC.

3.0 List of Standing Members as of August 2005

Name	Organization	Phone	Email
Steve Tromly	BPA - Co-Chair	503-230-4454	sctromly@bpa.gov
Lynne MacDonald	BR- Co-Chair	208-378-5316	LMACDONALD@pn.usbr.gov
Gail Celmer	COE - Co-Chair	503-808-4762	gail.c.celmer@usace.army.mil
Hope Ross	BPA - Project Mgr.	509-358-7476	heross@bpa.gov
vacant	BPA - Project Mgr.		
Allen Pomraning	COE Walla Walla District - Project Mgr.	509-527-7402	allen.n.pomraning@usace.army.mil
Robert Willis	COE Portland District - Project Mgr.	503-808-4760	robert.e.willis @usace.army.mil
Lawr Salo	COE Seattle District - Archeologist/Project Mgr.	206-764-3630	lawr.v.salo@usace.army.mil
Pei-Lin Yu	BR - Archeologist	503-808-3935	pyu@pn.usbr.gov
David Rice	COE Seattle District - Archeologist	206-764-3654	david.g.rice@usace.army.mil
David Grant	COE Seattle District – Archeologist/Project Mgr.	206-764-3634	david.m.grant@usace.army.mil
Mona Wright	COE Walla Walla District - Archeologist	509-527-7278	mona.k.wright@usace.army.mil
Michael Martin	COE Portland District - Archeologist	503-808-4771	michael.a.martin@usace.army.mil
vacant	BPA - Archeologist		
Jennifer Richman	COE Northwestern Division - Attorney	503-808-3763	jennifer.r.richman@usace.army.mil

APPENDIX L

COOPERATING GROUPS (Last Updated September 2005)

HUNGRY HORSE COOPERATING GROUP

Hungry Horse Dam is managed by the Bureau of Reclamation. The Cultural Resources Cooperating Group is composed of:

Bureau of Reclamation
1150 N. Curtis Rd.
Boise, ID 83706
(208) 378-5031
POC: Pei-Lin Yu, Power Office Archeologist

Bonneville Power Administration
707 W. Main St., Suite 500
Spokane, WA 99205
(509) 358-7476
POC: Hope Ross, Project Manager

Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo, MT 59855
(406) 675-2700
POC: Marcia Pablo, Tribal Historic Preservation Officer
Dave Schwab, Contracting Program Manager

Montana SHPO
P.O. Box 201202
Helena, MT 59620
(406) 444-7715
POC: Stan Wilmoth, State Archaeologist

Flathead National Forest
1935 Third Ave. East
Kalispell, MT 59901
(406) 758-5258
POC: Tim Light, Forest Archaeologist
Kyle McGuire, Assistant Forest Archaeologist

LAKE ROOSEVELT COOPERATING GROUP

Grand Coulee Dam/Lake Roosevelt is managed by the Bureau of Reclamation. The Cultural Resources Cooperating Group is divided into two sub-groups: the Spokane Tribe works largely on the Spokane River portion of Lake Roosevelt and the Colville Confederated Tribes work on the Columbia River portion. The entire Cooperating Group is composed of:

Bureau of Reclamation
1150 N. Curtis Rd.
Boise, ID 83706
(208) 378-5031
POC: Pei-Lin Yu, Archeologist

Bonneville Power Administration
707 W. Main St., Suite 500
Spokane, WA 99205
(509) 358-7476
POC: Hope Ross, Project Manager

Colville Confederated Tribes
P.O. Box 150
Nespelem, WA 99155
(509) 634-2692
POC: Camille Pleasants, Tribal Historic Preservation Officer

Spokane Tribe of Indians
P.O. Box 100
Wellpinit, WA 99040
(509) 258-4060
POC: Randy Abrahamson, Tribal Historic Preservation Officer
George Hill, Tribal Culture Program Coordinator

Office of Archaeology and Historic Preservation
P.O. Box 48343
Olympia, WA 98504-8343
360-586-3065
POC: Robert Whitlam, Washington State Archaeologist

National Park Service
Lake Roosevelt National Recreation Area
South 1368 Kettle Park Road
Kettle Falls, WA 99141
(509) 633-3860 X 101
POC: Ray Depuydt, Park Archaeologist

ALBENI FALLS COOPERATING GROUP

Albeni Falls Dam is managed by the Corps of Engineers, Seattle District. The Cultural Resources Cooperating Group is composed of:

U.S. Army Corps of Engineers, Seattle District
P.O. Box 3755
Seattle, WA 98124
(206) 764-3630
POC: Lawr Salo, Archeologist/Project Manager

Bonneville Power Administration
707 W. Main St., Suite 500
Spokane, WA 99205
(509) 358-7476
POC: Hope Ross, Project Manager

Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo, MT 59855
(406) 675-2700
POC: Marcia Pablo, Tribal Historic Preservation Officer
Dave Schwab, Contracting Program Manager

Kalispel Tribe of Indians
Natural Resource Dept.
P.O. Box. 39
Usk, WA 99180
POC: Kevin Lyons, Archaeologist

Kootenai Indian Tribe
P.O. Box 1269
Bonners Ferry, ID 83805
(208) 267-3519
POC: Josephine Shottanana, Cultural Coordinator

Coeur d'Alene Tribe
P.O. Box 408
Plummer, ID 83851
(208) 686-1800
POC: Quana Matheson, Cultural Coordinator

Kaniksu National Forest
Sandpoint Ranger District
1500 Highway 2
Sandpoint, ID 83864
POC: Tom Sandberg, Archaeologist

Idaho State Historical Society
1109 Main Street, Suite 250
Boise, ID 83702-5642
208-334-2682
POC: Kenneth Reid, Idaho State Archaeologist

CHIEF JOSEPH COOPERATING GROUP

Chief Joseph Dam is managed by the Corps of Engineers, Seattle District. The Cultural Resources Cooperating Group is composed of:

U.S. Army Corps of Engineers, Seattle District
P.O. Box 3755
Seattle, WA 98124
(206) 764-3630
POC: Lawr Salo, Archeologist/Project Manager

Bonneville Power Administration
707 W. Main St., Suite 500
Spokane, WA 99205
(509) 358-7476
POC: Hope Ross, Project Manager

Colville Confederated Tribes
P.O. Box 150
Nespelem, WA 99155
(509) 634-2692
POC: Camille Pleasants, Tribal Historic Preservation Officer
Guy Moura, Archeologist

Office of Archaeology and Historic Preservation
P.O. Box 4843
Olympia, WA 98504-8343
360-586-3065
POC: Robert Whitlam, Washington State Archaeologist

LIBBY COOPERATING GROUP

Libby Dam is managed by the Corps of Engineers, Seattle District. The Cultural Resources Cooperating Group is composed of:

U.S. Army Corps of Engineers, Seattle District
P.O. Box 3755
Seattle, WA 98124
(206) 764-3630
POC: David Rice, Archeologist/David Grant, Archeologist

Bonneville Power Administration
707 W. Main St., Suite 500
Spokane, WA 99205
(509) 358-7476
POC: Hope Ross, Project Manager

Confederated Salish-Kootenai Tribes
P.O. Box 278
Pablo, MT 59855
(406) 675-2700
POC: Marcia Pablo, Tribal Historic Preservation Officer
Dave Schwab, Contracting Program Manager

USDA/Kootenai National Forest
1101 US Highway 2 West
Libby, MT 59923
(406) 293-6211
POC: Rebecca Timmons, Forest Archeologist

USDA/Kootenai National Forest/Eureka Ranger Station
1299 Hwy. 93 North
Eureka, MT 59917
(406)-296-2536
POC: Cindy Hemry, District Archaeologist

Montana SHPO
P.O. Box 201202
Helena, MT 59620
(406) 444-7715
POC: Stan Wilmoth, State Archaeologist
Mark Baumler, SHPO

Libby Dam
17115 Highway 37
Libby, MT 59923
(406) 293-7751
POC: Richard Wernham, Park Manager

MCNARY, DWORSHAK, LITTLE GOOSE, LOWER GRANITE, LOWER MONUMENTAL AND ICE HARBOR COOPERATING GROUP

The six dams above are managed by the Corps of Engineers, Walla Walla District under one cooperating group. The Cultural Resources Cooperating Group "Payos Kuus Cuukwe" is composed of:

U.S. Army Corps of Engineers, Walla Walla District
201 North 3rd Ave
Walla Walla, WA 99362
(509) 527-7402
POC: Allen Pomraning, Project Mgr.
Mona Wright, Archeologist

Bonneville Power Administration
905 NE 11th
Portland, OR 97232
(503) 230-xxxxx
POC: -----, Project Manager

Colville Confederated Tribes
P.O. Box 150
Nespelem, WA 99155
(509) 634-2692
POC: Camille Pleasants, Tribal Historic Preservation Officer
Guy Moura, Archeologist

Confederated Tribes and Bands of the Yakama Nation
P. O. Box 151
Toppenish, Washington 98948
(509) 865-5121 X4737
POC: Johnson Meninick, Cultural Resources Program Mgr.

Confederated Tribes of the Umatilla Indian Reservation
P. O. Box 638
Pendleton, Oregon 97801
(541) 276-3629
POC: Teara Farrow, Cultural Resources Program Mgr.
Catherine Dickson, Archeologist

Nez Perce Tribe
P. O. Box 365
Lapwai, Idaho 83540
(208) 843-7400
POC: Vera Sonneck, Cultural Resources Program Mgr.
Kevin Cannell, Archeologist/Tribal Historic Preservation Officer

Wanapum Band
15655 Wanapum
Village Lane SW
Beverly, WA 99321
(509)-766-2522
POC: Rex Buck, Jr.

Office of Archaeology and Historic Preservation
P. O. Box 48343
Olympia, Washington 98504
(360) 586-3080
POC: Robert Whitlam, Washington State Archaeologist

Idaho State Historical Society
210 Main Street
Boise, Idaho 83702
208-334-2682
POC: Kenneth Reid, Idaho State Archaeologist

State Historic Preservation Office
725 Summer St. N.E.
Salem, Oregon 97301
(503) 986-0674
POC: Dennis Griffin, SHPO Archaeologist

BONNEVILLE, THE DALLES, AND JOHN DAY COOPERATING GROUP

The three dams above are managed by the Corps of Engineers, Portland District under one cooperating group. The Cultural Resources Cooperating Group "Wana Pa Koot Koot" is composed of:

U.S. Army Corps of Engineers, Portland District
P.O. Box 2946
Portland, OR 97208
(503) 808-4760
POC: Robert Willis, Project Mgr.
Michael Martin, Archeologist

Bonneville Power Administration
905 NE 11th
Portland, OR 97232
(503) 230-xxxx
POC: -----, Project Manager

Confederated Tribes of Warm Springs of Oregon
P.O. Box C
Warm Springs, OR 97761
(541) 553--2006
POC: Sally Bird, Cultural Resources Program Mgr.
Steve Jenevein, Archeologist

Confederated Tribes and Bands of the Yakama Nation
P. O. Box 151
Toppenish, Washington 98948
(509) 865-5121 X4737
POC: Johnson Meninick, Cultural Resources Program Mgr.
Shane Scott, Archeologist

Confederated Tribes of the Umatilla Indian Reservation
P. O. Box 638
Pendleton, Oregon 97801
(541) 276-3629
POC: Teara Farrow, Cultural Resources Program Mgr.
Shawn Steinmetz, Archeologist

Nez Perce Tribe
P. O. Box 365
Lapwai, Idaho 83540
(208) 843-7400
POC: Vera Sonneck, Cultural Resources Program Mgr.
Josiah Pinkham, Ethnographer

Office of Archaeology and Historic Preservation
P. O. Box 48343
Olympia, Washington 98504
(360) 586-3080
POC: Robert Whitlam, Washington State Archaeologist

State Historic Preservation Office
725 Summer St. N.E.
Salem, Oregon 97301
(503) 986-0674
POC: Dennis Griffin, SHPO Archaeologist

Appendix M

USACE Policy Guidance for Carrying Out Cultural
Properties Management Activities at Corps
Projects (1998)



DEPARTMENT OF THE ARMY
NORTHWESTERN DIVISION, CORPS OF ENGINEERS
P.O. BOX 2870
PORTLAND, OREGON 97208-2870

Reply to
Attention of:

CENWD-NP-ET-P

17 DEC 1998

MEMORANDUM FOR

Commander, Portland District
Commander, Seattle District
Commander, Walla Walla District

SUBJECT: Policy Guidance for Carrying Out Cultural Properties
Management Activities at Corps Projects

1. The subject policy guidance is enclosed for your information and use.
2. Although much of the enclosed policy and guidance has application to the Corps of Engineers' overall cultural properties management program, the focus at this point is upon those Federal dams and reservoirs that constitute the Federal Columbia River Power System (FCRPS). This includes the 12 Corps-administered projects which were included in the System Operations Review (SOR) Study and EIS.
3. To a large degree the guidance provided herein is a follow-up to the Division/Districts meeting held during 3-4 August 1998 to seek common understanding of program execution issues in order to instill consistency in the overall approach across all three Districts. I cannot overemphasize the need for consistency in that regard. The cultural properties management program is a single program, but one that is divided amongst three Districts for execution. Frequent and continuing communications between the involved staffs of the three Districts and this office is considered essential to achieving a consistent program approach.
4. The preservation and protection of significant cultural properties is a responsibility placed upon us by various preservation statutes. It is also an area of great concern and sensitivity to interested and affected Native Americans as well as the scientific community. As such, we must carry out our preservation mandates in a reasonable and open fashion, and with due consideration of the cultural sensitivities of Native Americans. I believe the direct funding agreement between the Corps and the Bonneville Power Administration; the joint agency resource commitment to this cultural properties management effort; and the organizational structure provided by the Cultural

CENWD-NP-ET-P

SUBJECT: Policy Guidance for Carrying Out Cultural Properties
Management Activities at Corps Projects

Properties Cooperating Work Groups that you have established within you respective Districts affords an unprecedented opportunity to move forward with a cooperative and collaborative cultural properties approach at Corps-administered projects for years to come. I expect each of you to take a personal interest in this matter and to keep this office informed of your actions and progress.

SIGNED

Encl

ROBERT H. GRIFFIN
Brigadier General, USA
Commanding

CF:

BPA (Tom McKinney)

NORTHWESTERN DIVISION – NORTH PACIFIC REGION**POLICY GUIDANCE**

For

**CARRYING OUT CULTURAL PROPERTIES MANAGEMENT
ACTIVITIES AT CORPS PROJECTS****AUTHORITIES AND REFERENCES**

A listing of key authorities and relevant references is included as Appendix A.

SCOPE

Although much of the policy and guidance that follows has application to the Corps of Engineers (Corps) overall cultural properties management program in the North Pacific Region, the focus at this point is upon those Federal dams and reservoirs that constitute the Federal Columbia River Power System (FCRPS). This includes the 12 Corps-administered reservoir projects which were included in the System Operations Review (SOR) Study and EIS. The background information provided below is likewise directed at the actions and events leading up to the cultural properties management program that has been initiated and will continue at these 12 Corps projects.

BACKGROUND

The SOR study, which was a collaborative effort between the FCRPS action agencies (Corps, Bonneville Power Administration [BPA], and the Bureau of Reclamation [Reclamation]), was essentially completed in mid-1996. Although a Cultural Resources Work Group was formed as part of the SOR study to address the potential effects of alternative FCRPS operations on cultural properties, lingering concerns remained following completion of the SOR study process. The primary concern, as expressed by many of the Tribes in the Columbia River Basin, was the absence of a program and commitment by the action agencies to preserve and protect cultural properties that were being or may be adversely affected by operations of FCRPS dams and reservoirs.

In March of 1996 the three action agencies met and agreed on a conceptual process to fulfill their responsibilities under the National Historic Preservation Act (NHPA) and other relevant statutes, and to engage the affected Tribes in a cooperative cultural properties management approach. By letter dated 22 May 1996 (referenced as Appendix A – 8), District Commanders were directed to budget an annual baseline amount of Operation and Maintenance (O&M) funds to provide for the non-power share of cultural properties management costs. BPA committed to fund the power share.

Following a series of four Government-to-Government meetings with the involved Columbia River Basin Tribes in late 1996 and early 1997, the action agencies committed to a cultural properties management program covering a period of fifteen years. BPA committed to provide \$3.5 million per year as the power share of program costs (initially \$2.5 million annually for Corps projects and \$1 million annually for Reclamation projects). Unrecognized at the time was that the Corps lacked the appropriate procedural mechanisms to accept BPA funds for cultural properties management activities. Hence, the cultural properties management program could not be implemented as envisioned in FY98. In any event, by letter dated 22 February 1997 (Appendix A - 9), District Commanders were, among other things, directed to establish reservoir or management area cooperating groups made up of interested and affected parties as a means of promoting a collaborative process for the management of cultural properties on lands under Corps jurisdiction.

As noted above, the cultural properties management program could not be implemented as envisioned in FY98 because the Corps lacked the appropriate procedural mechanisms to accept BPA funds for that purpose. However, with execution of the Direct Funding Agreement (Appendix A - 10) the Corps now has, beginning in FY99, the proper mechanisms in place to use funds from BPA for cultural properties management activities. This funding, combined with appropriated non-power funding, provides for an annual program amount of nearly \$3 million.

CURRENT STATUS

Five distinct Cultural Properties Cooperative Work Groups (hereinafter referred to as Co-op Groups) have been established to address cultural properties management activities at the 12 Corps reservoir projects, as described below.

DISTRICT	PROJECTS ENCOMPASSED
Portland - 1 Co-op Group	Bonneville, The Dalles, John Day
Seattle - 3 Co-op Groups (1 for each project)	Chief Joseph, Albeni Falls, Libby Dam
Walla Walla - 1 Co-op Group	McNary, Ice Harbor, Lower Monumental, Little Goose, Lower Granite, Dworshak

A Letter of Agreement between the Corps and BPA has been signed by agency representatives to the Joint Operating Committee (JOC). That Letter of Agreement is referenced as Appendix A - 11 and included herein as Appendix B.

FY99 funds have been apportioned to the 12 Corps projects as agreed to by the JOC, with direct funded amounts and appropriated funds clearly identified.

PURPOSE

The purpose of the policy guidance provided herein is to promote common understanding and foster consistency in approach within and between the Districts of the North Pacific Region regarding cultural properties program execution as applies to the projects and Co-op Groups described above. To a large degree, this guidance is a follow-up to the meeting held at the Northwestern Division office on 3-4 August 1998 involving participants from the three Districts and the Division office; convened to help clarify overall program approach and need for consistency in execution.

POLICY

It is the policy of the Corps of Engineers to preserve, protect, and manage significant archeological, historical, and traditional cultural properties on lands under its jurisdiction or affected by its actions in accordance with National Historic Preservation Act and other applicable statutes, Executive Orders, and regulations. In carrying out its cultural properties management responsibilities at FCRPS projects, Corps District Commanders will:

- Provide opportunities for input by all interested and affected parties through the establishment of Cultural Properties Cooperative Work Groups (Co-op Groups);
- Adhere to Corps policies and procedures, including Corps procurement policies and procedures;
- Exercise sound fiscal controls and overall program accountability; and,
- Promote reasonable consistency in program approach and execution between Districts.

ROLE OF CO-OP GROUPS

The Co-op Groups were designed to serve as the focal point for coordination and information exchange associated with the cultural properties management program. The purpose for setting up these groups is to provide a forum whereby interested and affected parties, particularly the Tribes, can collaborate with the Corps and assist in identifying, planning, prioritizing and reviewing the work activities deemed necessary to preserve, protect, and manage significant cultural properties and achieve compliance with the NHPA and other pertinent statutes. It is important that the views of all participants of the Co-op Groups be fully considered in the Corps' decision-making process. However, because the focus of this effort is to preserve and protect significant cultural properties that are located on lands under Corps jurisdiction, and for which the Federal government has statutory responsibility, the decision-making function must reside with the District Commander. It is important that District Commanders fully communicate this Corps decision-making role to all participants on the respective Co-op Groups.

CO-OP GROUP ORGANIZATION AND FUNCTIONS

Although the original concept for establishing Co-op Groups was to promote a collaborative partnership with interested and affected Tribes, it is also appropriate that other interested and affected parties be invited to participate. The organization of each Co-op Group will likely vary, depending on the Districts' needs and issues. In addition to the Tribes (having either treaty, ceded, adjudicated or ownership rights which may be affected), it is expected that State Historic Preservation Officers would also be invited to participate. Participation by other Federal, state, or local government agencies may also be appropriate. The overall make up of the respective Co-op Groups is left to the District Commanders' discretion.

The internal functioning of the respective Co-op Groups is also left to the discretion of the District Commanders. However, to avoid confusion and misunderstanding within the Co-op Groups, each Co-op Group will establish a written agreement or charter early on that clearly identifies the roles and responsibilities of the participating parties. As a minimum, such agreements should clearly indicate that Co-op Group participants are there to assist the Corps in identifying, planning, prioritizing, and reviewing work activities.

FUNDING FOR PARTICIPATION IN CO-OP GROUPS

Although participation by the Tribes and other interested and affected parties in the Co-op Groups to assist the Corps in identifying, planning, and prioritizing cultural resource management activities is considered important, it is the policy of this office that no O&M funds will be provided to the Tribes or any other parties for the expressed purpose of traveling to and participating in Co-op Group meetings.

CORPS/BPA ROLES AND RESPONSIBILITIES

Operations of the Federal dams and reservoirs and the transmission system that make up the FCRPS places a shared responsibility on the Corps, BPA, and Reclamation to preserve, protect, and manage cultural properties that are being or may be affected by such operations. However, because these cultural properties are located on lands under Corps jurisdiction, the Corps has the ultimate responsibility to decide the preservation and protection actions necessary under the NHPA and other relevant statutes, Executive Orders, and regulations. BPA has an obligation to pay the hydropower share of costs associated with cultural properties preservation and protection actions. Hence, BPA has a direct interest in how funds are being utilized and to what degree progress is being made in meeting Federal compliance responsibilities under the NHPA. It is because of this interest that BPA participates on the various Co-op Groups. The Corps and BPA, working through the JOC, will have exclusive authority over budgetary matters. Once funding levels are agreed to by the JOC, the Corps shall exercise management and control of those funds associated with the cultural properties management program. The Corps and BPA will work closely on the budgetary aspects of the cultural properties management program, but decision-making with regard to specific preservation and protection actions at Corps-administered projects ultimately resides with the Corps.

EXECUTION OF WORK

As described in the Corps/BPA Letter of Agreement (included as Appendix B), the Corps is the lead agency for purposes of achieving cultural properties compliance within the jurisdictional boundaries at Corps administered projects. As such, all actions are to be consistent with Corps policies and regulations, including Corps procurement policies and procedures. Utilizing BPA to acquire goods and services will only occur when consistent with guidance provided in IX.A. of the North Pacific Region Internal Operating Policy (Appendix A - 12).

CONTRACTING WITH TRIBES

Within available authorities and consistent with Corps procurement policies and procedures, and in the spirit of the U.S. Army Corps of Engineers Tribal Policy Principles (Appendix A-6), District Commanders should explore opportunities to contract with Tribes for cultural properties compliance activities. To assist you in that regard, contracting tools having application to Tribal Governments are listed in a Memorandum for the Record (provided herewith as Appendix C). Appendix D, which deals with Economy Act Contracts and Cooperative Agreement Contracts, is also provided for your information. These appendices contain information and definitions which may prove helpful as you explore opportunities to contract with the Tribes. As discussed during the 3-4 August 1998 meeting previously referred to, it is essential that we exercise consistency in our approach to contracting with Tribes. To facilitate consistency in approach it is imperative that there be open communications between the three involved Districts to share information on successes, opportunities, and procedural understandings. When there are issues or doubts regarding the application of a particular contracting method or methods, District Commanders should raise those issues to the Northwestern Division Office for clarification and/or resolution.

BUDGETARY MATTERS

The Corps' representative on the Cultural Resources Sub-Group of the JOC, Mr. Owen Mason, is continuing to work with the BPA representative on that Sub-Group, Mr. Tom McKinney, on cultural properties budget criteria, formats, timelines, and expenditure reporting, and so forth. Guidance on budgetary matters will be provided to you at a later date.

APPENDIX A

AUTHORITIES AND REFERENCES

1. National Historic Preservation Act (NHPA) of 1966 as amended 1992, (PL 89-665). This Act is the basic Federal law governing the preservation of historic and archaeological resources of national, regional, and local significance. This Federal law is the underlying structural basis of the national program to coordinate and support public, private and Tribal efforts to identify, evaluate, and protect cultural properties.
2. Archaeological Resources Protection Act (ARPA) of 1979, as amended (PL 96-95). This Act requires Federal agencies to ensure that no violations occur which adversely affect cultural properties within agency responsibilities, and provides criminal and civil penalties for violations and prohibited acts of destruction of cultural properties.
3. Native American Graves Protection and Repatriation Act (NAGPRA) of 1990, (PL 101-601). This Act requires agencies to inventory, summarize, and repatriate certain classes of cultural items, including human remains, to the appropriate Native American Tribes or Groups. It also requires that the repatriation process include consultation with the Native American governments and appropriate groups.
4. Executive Order 13007, Indian Sacred Sites. This Order directs Federal agencies to ensure that and Indian Sacred Sites are not inadvertently damaged through the implementation of the agency mission, and that the agencies ensure that Native Americans have access to their sacred sites for the purpose of a religious, spiritual, or sacred nature.
5. ER 1130-2-540, Environmental Stewardship: Operations and Maintenance Policies, 15 November 1996 - (Chapter 6, Cultural Resources), and EP 1130-2-540 (Environmental Stewardship: Guidance and Procedures). These guidelines apply to cultural properties management at Operating Projects for protection and preservation activities related to Federal compliance.
6. Policy Guidance Letter No.57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes, signed by Lt. General J. Ballard, 1997. This document sets forth six principles to enhance the Corps' relationship with Native American

Tribal Governments, and directs the acknowledgement of its sovereignty, trust responsibilities, and the necessity of consultation.

7. **Strategic Vision, US Army Corps of Engineers**, issued General J. Ballard, sets forth the corporate vision and a strategic management plan which is designed to transform and position the Corps for excellence and success in the 21st Century.

8. **Memorandum for Commanders, NWP, NWS, NWW**, from MG Fuhrman dated 22 May 1996, Subject: SOR Cultural Resources Program Execution. This memorandum sets forth, among other things, a baseline O&M funding obligation for program execution.

9. **Memorandum for Commanders, NWP, NWS, NWW**, from BG Griffin dated 22 February 1997, Subject: System Operation Review (SOR) Historic Properties Program Execution. This memorandum directs, among other things, that the districts establish reservoir or management area cooperating groups.

10. **Memorandum of Agreement between the Bonneville Power Administration (BPA) and the Department of the Army (DA)** signed on 22 December 1997, also referred to as the **Direct Funding Agreement**. This MOA implements a major policy change by authorizing direct funding by BPA to the Corps for hydropower specific baseline and small capital O&M work and the power portion of joint use costs on Corps projects. The agreement provides for 5-year budgets for each project beginning with FY 1999. The non-power portion of joint use costs continue to be funded by Congressional appropriations.

11. **Letter of Agreement between the Corps and BPA** dated November 1998 and titled **Direct Funding Cultural Properties Management Costs**. This agreement establishes a cultural properties sub-group of the Joint Operating Committee (JOC) to advise the JOC on costs associated with cultural properties management activities. It also provides general guidelines regarding cultural properties budgeting and contracting processes.

12. **Northwestern Division - North Pacific Region Internal Operating Policy**. This document, dated November 1998 describes the internal operating policy for regional coordination and collaboration with BPA for hydropower activities.

APPENDIX B

Letter of Agreement Associated with Bonneville Agreement No. 98BP-10211

DIRECT FUNDING CULTURAL PROPERTIES MANAGEMENT COSTS (Under Direct Funding of Power Operations and Maintenance Costs at Corps Projects)

1. Cultural Properties Subgroup

A Cultural Resources Subgroup of the Joint Operating Committee (JOC) has been created and is composed of one member each from the Corps and Bonneville. The Subgroup will:

- (a) Advise the JOC on costs associated with cultural properties management activities attributable to power and to multipurpose operation and maintenance on facilities included in the Direct Funding Agreement (DFA).
- (b) Serve as liaison between the respective Reservoir Cooperating Groups and the JOC.
- (c) Provide other assistance to the JOC as requested.

2. Cultural Properties Management Budget

- (a) Consistent with provisions of the DFA, by June 1 of each year the Cultural Properties Subgroup will submit budgets for cultural properties management activities to be included in the Corps' proposed Five-Year and Annual Power Budgets for JOC consideration (initially, here as Exhibits A and B, respectively). The budgets will identify both appropriated funds to be reimbursed by the power allocation (if any), as well as the direct-funded power allocation funds and respective non-power allocation funds. The budgets may also identify anticipated Corps administrative expenses. In preparing the budget submittal the Subgroup will consider the views of affected interests, especially Reservoir Cooperating Groups.
- (b) If actual cultural properties management costs are less than anticipated in a given Annual Budget, the remaining funds can be applied to the next cultural properties management priority(ies) within the next Five-Year Budget. Funds carried over do not contribute to the separate budget item referenced in paragraph 5(b)(3) of the DFA.
- (c) In collaboration with the Reservoir Cooperating Groups, the Cultural Properties Subgroup will develop procedures for determining appropriate allocation of funds among individual projects for cultural properties management joint costs, to be applicable beginning with the FY 2000 budget.

3. Contracting Cultural Properties Management

The following guidelines will be used in conjunction with the procurement of goods and services associated with management of cultural properties:

- (a) In most instances the Corps is the lead agency for purposes of achieving cultural properties compliance within the jurisdictional boundaries at Corps-administered reservoirs, consistent with legal and consultation requirements as well as with Corps procurement policies and procedures.

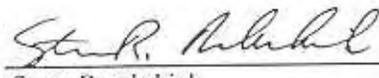
- (b) In the event the Corps, in collaboration with Bonneville, elects to procure goods and services through Bonneville's procurement procedures in accordance with existing authority, including 16 USC 832m, the Corps may initiate an Intergovernmental Agreement with Bonneville, specifying work to be performed, standards of performance, and expected costs consistent with the Annual Budget. Once approved by both agencies, Bonneville will execute the Intergovernmental Agreement.

4. Modification

This Letter of Agreement may be modified with the written agreement of the parties or terminated upon 90 days advance written notice to the other party.

EXECUTED BY:

 Date 11/10/98
Michael E. Alder
Joint Operating Committee
Bonneville Power Administration

 Date 11-10-98
Steve Brockshink
Joint Operating Committee
U.S. Army Corps of Engineers

APPENDIX C

MEMORANDUM FOR RECORD

1 June 1998 (draft)

Re: CONTRACTING WITH NATIVE AMERICAN ORGANIZATIONS

1. PURPOSE: This is a guide to contracting with Native American organizations within the civil works program of the USA Corps of Engineers within the Northwest Division.

2. DEFINITIONS: For purposes of this memorandum, the following definitions and abbreviations apply:

a. FNAT: Federally-recognized Native American Tribal organization: This term includes several hundred federally-recognized Native American tribal organizations, including Alaska Native Corporations (ANC's) and Hawaii aboriginal organizations, who have federal recognition for purposes of 25 CFR Part 83. It does NOT include other tribal organizations recognized by states or others, but not recognized by the Dept. of Interior (DOI) Bureau of Indian Affairs (BIA). There are several Pacific Northwest tribal organizations currently in various statuses of getting DOI BIA federal recognition.

b. NFNAT: Not-Federally-recognized Native American Tribal organizations: This includes all claimant tribal organizations that have not yet obtained federal recognition under 25 CFR Part 83. Most federal programs require that tribes be recognized by the DOI BIA before they are eligible for federal Native American programs.

c. Indian Reservation: An Indian Reservation is a tract of land set aside by the United States Government for the exclusive use of a particular tribe or band of Native Americans pursuant to treaty, statute, or executive order. Ownership of the fee title is in the United States, and the land is considered held in trust by the United States for the benefit of the designated tribe or band of Native Americans.

d. Alienated Reservation Lands: Due to the vagaries of federal Indian programs, there exist within the outer boundaries of some Indian Reservations alienated reservation lands whose ownership and possession have passed from the United States and trust beneficiary Native Americans to third parties. The status of such lands and the status of third parties on them are currently the subject of controversy and litigation. For most purposes, Alienated Reservation Lands should not be considered Indian Reservation lands.

e. Native American Trust Lands: In addition to recognized Indian Reservations, there is a large collection of other lands owned by the United States and held as Native American Trust Lands. Such lands include sites held in trust for multiple tribes (e.g. the Columbia River In Lieu sites and the Columbia River Fishing Treaty Access Sites (CRFTAS)) and most gambling casino lands off of the Indian Reservations.

f. Special Status Lands: This is a generic term for a variety of special situations involving Indian Reservation lands where they have been only partially alienated or designated for other uses and occupants, such as the Indian Reservation lands Congress has partially withdrawn back for federal Corps and Bureau of Reclamation projects operated by the United States for the benefit of non-Native Americans. This term also includes lands where the Native Americans have special rights but the lands are not Indian Reservation lands or fully Native American Trust Lands. Riparian areas in the Pacific Northwest where various tribes have OFF-RESERVATION fishing rights under the 1855 treaties are examples of such special status lands. In addition, under other federal laws, executive orders, and regulations, Native Americans or their tribal governments may have partial or exclusive use of specific other federal lands, for some designated period of time or for all time. Sites given special status under the Native American Freedom of Religion provisions have such special status.

g. NAGPRA Sites: In addition to other special programs, the Native American Grave Protection and Repatriation Act (NAGPRA) gives the Native American tribal organizations certain rights to ceded lands of that particular tribe in connection with known or discovered archeological sites containing bodies or articles belonging to the tribe. Some states like Oregon have also adopted similar state-NAGPRA statutes, which offer similar but different rights.

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h. Set-aside: A contract or program set aside for the exclusive use of one or more persons or entities or class(es) of persons or entities. Existing set-aside programs include small businesses, small disadvantaged businesses, small woman-owned businesses, and small Native American owned small businesses.

i. Preference Program: A program that provides preferential treatment to a designated individual, entity, or group(s) of individuals and/or entities. Set-asides are one type of preference programs. The proposed HUBzone program, which gives HUBzone contractors a 10% price differential in bidding, is another type of preference program. The Self-Determination Act programs for Indian tribes are also preference programs.

j. FAR: Federal Acquisition Regulation: a multi-agency procurement regulation governing most federal procurements.

k. DFARS: Defense FAR Supplement: the Defense Dept. supplementary regulation to the FAR.

l. AFARS: Army FAR Supplement: the Army supplementary regulation to the FAR and DFARS.

m. EFARS: Engineer FAR Supplement: the Corps of Engineers supplementary regulation to the FAR, DFARS, and AFARS.

n. CRFTAS Tribe: one of four designated beneficiary tribes of this program: the Confederated Tribes and Bands of the Yakama Indian Nation; the Confederated Tribes of the Warm Springs Reservation; the Confederated Tribes of the Umatilla Reservation; and the Nez Perce Tribe.

o. 1855 Treaty Tribe: one of approximately 30 Pacific Northwest tribes in Oregon, Washington, Idaho, and Montana whose elders signed on to one of the various versions of a generic 1855 treaty presented to the tribes by Gov. Stephenson of Washington Territory and Gen. Palmer of Oregon Territory in 1855 at several encampments in Oregon and Washington. One of the generic elements of this 1855 treaty was the reservation of tribal rights to OFF-reservation hunting and fishing rights. Various rights under this treaty have been litigated to the US Supreme Court seven times. In addition there are semi-permanent court proceedings and judicial orders carrying out the provisions of this treaty.

p. Equal Footing doctrine: Federal Constitutional case law holding that newly admitted states to the union of the United States receive the same rights and benefits as the original 13 States, including the transfer of the title to the bed of navigable waters from United States ownership to state ownership, except for prior transfers. In the case of the 1855 treaties, the 1855 treaties and their grants of rights to the tribes predated the statehood admissions of Oregon, Washington, Idaho, and Montana – but not individual federal land grants or patents issued prior to 1855.

q. Navigation Servitude: Federal Constitutional case law holding that the public right of navigation upon navigable waters of the United States is paramount or superior to all other rights to use or ownership of the navigable waters; and also recognizing that the United States acting through the Corps of Engineers (and other appropriate federal entities) can take and use any part of the navigable waterways below the ordinary high water lines without any compensation to anyone.

s. Procurement Contracts: Procurement contracts are contracts subject to and performed pursuant to the provisions of the FAR.

t. Non-Procurement Contracts: Non-procurement contracts are any other contracts or agreements, involving the United States or its entities as parties, that are NOT subject to the FAR. Among the classes of contracts and agreements not governed by the FAR and not considered procurement contracts are: grants and cooperative agreements; real estate agreements; and a variety of other federal contractual statutory programs.

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3. NATIVE AMERICAN CONTRACTING OPPORTUNITIES UNDER THE FAR

a. FAR Preference Programs: None of the present or anticipated FAR preference programs are exclusively for Native American contractors or tribes. Many such programs include small Native American businesses within their eligibility, including set-aside programs for small businesses and preferential programs for HUBzone contractors currently being implemented by the Small Business Administration (SBA).

b. DFARS Native American Program: The DFARS (Subpart 226.1) has a special military set-aside program applicable to designated military contracts. It's funding is DOD military appropriations, and it is not applicable to civil works programs or contracts.

c. Sole Source Opportunities under the FAR: The FAR (6.302-1) generally allows sole source contracting when there is only one possible source. This authority has frequent application to Native American activities:

(1) NAGPRA: NAGPRA (25 USC 3001ff., 43 CFR 10) authorizes and requires sole source contracting with specific Native American tribes for activities required by NAGPRA. Given the volume and diversity of Native American cultural artifacts within the division, there is much opportunity here for sole source contracting with the various tribes.

(2) Historic and Archeological Preservation activities: Some but all historical and archeological work can be justified as sole source work when only a particular tribe or Native American can provide the necessary services. This type of sole source circumstance arises typically when doing tribal histories and tribal archeological work. It does not apply to general historical or archeological work.

(3) Reservation Work and Some Off-Reservation Tribal Work: Although the Buy Indian Act does not apply to Corps civil works missions generally, it does apply to contracts by BIA, the Indian Health Service, HUD Indian Housing services, and certain Dept. of Education Indian education services. Similarly, part of the Indian Self-Determination Act, 25 USC 450e(b) applies to specific Indian programs. If a Corps entity does work under these authorities for one of the designated agencies, under the Economy Act, then the other agency's authorities apply, and the Buy Indian Act or 25 USC 450e(b) may be used to limit contracting and/or subcontracting to designated Indian eligibles. See Alaska Chapter, AGC v. Pierce, 694 F.2d 1162 (9th Cir. 1162)

d. Indian Self-Determination Act Opportunities: Most of the Indian Self-Determination Act (25 USC 450 ff., Pub. L. 93-368, Jan. 4, 1975, 88 Stat. 2303, as amended) deals with a specific statutory contract between BIA and individual tribes. However, another part of the Indian Self-Determination Act, 25 USC 450e(b), provides for and requires Native American training, employment, and subcontracting opportunities for those federal projects whose principal beneficiary(ies) is/are Native Americans and their tribes. After much discussion up and down the Army chain of command, it was decided and directed that the best means of implementing this Native American statute was to use negotiated procurements where 2 of the technical evaluation factors were the statutory criteria. Other factors must include price (by statute and regulation) and may/should include technical evaluation criteria focused on the work to be performed. This procedure has worked for the CRFTAS program through multiple phases.

4. NATIVE AMERICAN TRIBES AS SPONSORS

Portland and Seattle Districts have successfully undertaken projects under normal civil works authorities where specific Native American tribes are sponsors, either by themselves, or in conjunction with others. With many tribes having gaming monies to spend on tribal needs, this is an area of potential growth for civil works activities, particularly since most Native American tribes are trying to achieve the same environmental and natural resource goals that the Corps is.

a. PCA Sponsors: Tribes can serve as PCA sponsors with regard to reservation lands. Federal money loses its character as federal money once it comes into control of tribes. In addition, trust fund moneys are not

considered federal money for our purposes under old case law from around 1900, but are deemed tribal money. The tribes usually also have independent sources of funds too.

b. Assistance agreements: We can provide technical assistance to tribes like state governments receive it. There is COE regulation on such technical assistance activities.

c. Tribal volunteers and challenge cost-share agreements: The tribes are eligible to participate in these programs. Again COE regs apply.

d. Other opportunities: There are a lot of other opportunities for tribal relationships within general COE programs provided one is looking for and promoting such opportunities.

5. SPECIAL CONTRACTING ISSUES WHEN CONTRACTING WITH NATIVE AMERICAN TRIBES

a. SOVEREIGN IMMUNITY: The tribes have a limited degree of sovereign immunity. For an agreement or contract to be valid, both as a contract and as a waiver of tribal sovereign immunity, the contract must be executed by the authorized tribal leader (usually with required tribal council approval). If the agreement is with other than a federal agency, then the Secretary of Interior's approval is also required. The tribal approval resolution should state explicitly that tribal sovereign immunity is waived.

b. JURISDICTION: When contracting with a tribe, a special effort is required to determine that the tribe has jurisdiction and authority to do what it is contracting to do. The concern stems from the variations in tribal sovereignty recognized by DOI under the Self-Determination Act (above). In addition, various tribes are in various steps of the EPA process by which tribes gain regulatory control over their waters under the Clean Water Act. In addition, as *Montana v. United States*, 450 US 544, 87 L Ed 2d 493, 101 SCt 1245 (1981) [tribes generally do NOT have control or ownership of beds of navigable waters], *South Dakota v. Bourland*, 508 US 679, 124 L Ed 2d 606, 113 SCt 2309 (1993), and *Lower Brule Sioux Tribe v. South Dakota*, 711 F.2d 809, 813, fn. 1 (8th Cir. 1983) [Oahe Dam built on reservation lands withdrawn by Congress from reservations reverted jurisdiction back to COE from tribes], and *Brendale v. Confederated Yakima Nation*, 492 US 408, 106 L Ed 2d 343, 109 SCt 1994 (1989) [Yakama lost right to eject non-Indians from reservation lands in open part of reservation, and thereby lost derivative rights to zone and control their activities; but retained full control over closed part of reservation] show, the question of jurisdiction varies from land parcel to land parcel even within reservation boundaries.

c. TRIBAL CORPORATIONS: The Colville Tribe have established a tribal corporation to be their contracting party on Corps jobs. The corporation does not share the tribe's sovereign immunity, but does present additional issues when it contracts, because it retains much of the tribe's and tribal members tax immunities and immunities from other state regulatory measures. As a result, careful coordination is required so that the federal contract administrators understand the differences in dealing with a particular tribal corporation who is really only subject to federal law and tribal ordinance.

d. TERO: Tribal Employment Rights Offices (TERO) are a complex subject. Tribal sovereignty enforces their requirements when work is performed upon reservation lands controlled by and within the jurisdiction of the tribal government (but, as *Bourland* and *Lower Brule* show, not on reservation lands withdrawn by Congress; and, as *Brendale* suggests, not on lands within reservation boundaries which have passed beyond tribal control.) TERO has been applied to multi-tribal projects by legislative or executive grace on occasion as a way to effectuate 25 USC 450e(b) training and subcontracting preferences. However in these circumstances, such use of TERO has been explicitly negotiated. For the CRFTAS program, a rate of % per each of the 4 tribes having rights on the property has been recognized in the Government Estimate.

e. CULTURAL ACCOMMODATION AND COMMUNICATIONS: Successful contracting and working relationships with the various Native American organizations requires special efforts at good communications and bridging the cultural gaps between non-Indian and Indian cultures. President Clinton's Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, May 14, 1998, 63 Fed. Reg. 27655, No. 96, Tue. May 19, 1998, and his earlier Executive memorandum of April 29,

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1994, on government to Government Relations with Native American Tribal Governments, provide a regulatory framework for each federal agency to carry out effective communications and coordination with tribal governments affected by each agency's programs. The Defense Dept., the Army, and the Corps of Engineers have been developing and implementing supplementary guidance also. In addition, as a follow-on to the joint BPA-BOR-COE systems review study, additional joint efforts at tribal coordination are also underway. And additional tribal coordination is being pursued under the various fish and other litigations involving the tribes of the Pacific Northwest and federal agencies managing fish and other natural resources, including the COE. Federal-Tribal relationships are undergoing dynamic change and development as this document is prepared.

f. STATUTORY AND REGULATORY CHANGES: Although this point has been touched upon above, it is critical that those working in the arena of tribal relationships with the Federal Government recognize and stay abreast of the many statutory and regulatory changes that keep occurring. The federal contract preference programs are currently being implemented in new ways as a result of new laws and case law decisions. For HUBzone changes and other changes, major FAR and DFARS changes are in the process of being developed and issued, with target effective dates in CY 1998.

APPENDIX D

NON-PROCUREMENT CONTRACTS:

ECONOMY ACT CONTRACTS AND COOPERATIVE AGREEMENT CONTRACTS

8/25/98 DRAFT

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I. SITUATION:

The following statutes and regulations provide the legal framework for Economy Act agreements and cooperative agreements.

a. THE ECONOMY ACT:

(1) In 1920 Congress passed the original Economy Act, which became law on May 21, 1920. Its purpose was to drastically reduce the spending and improve the cost efficiency of the Federal Government as it came out of World War I. Its most enduring legacy is 31 USC 1535 which provides for one federal agency providing acquisition support to another federal agency:

(2) As amended in 1984 to eliminate "offloading", Section 1535 provides in part as follows:

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if—

(1) amounts are available;

(2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;

(3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and

(4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

[(b) provides for payment procedures]

(c) A condition or limitation applicable to amounts for procurement of an agency or unit placing an order or making a contract under this section applies to the placing of the order or the making of the contract.

[(d) concerns obligations of appropriations]

(e) This section does not—

(1) authorize orders to be placed for goods or services to provided by convict labor; or

(2) affect other laws about working funds.

(3) FAR 17.503 requires the following Determination and Finding to use an Economy Act agreement:

(1) Use of an interagency acquisition is in the best interest of the Government; and

(2) The supplies and services cannot be obtained as conveniently or economically by contracting directly with a private source.

If the servicing agency fulfills the order by a contract, at least one of the following circumstances must be stated to apply too:

(1) The acquisition will appropriately be made under an existing contract by the servicing agency, entered into before placement of the order, to meet requirements of the servicing agency for the same or similar supplies or services;

(2) *The servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or*

(3) *The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.*

b. OTHER SPECIAL STATUTORY AUTHORITY

FAR 17.500(b) provides that the Economy Act applies when more specific statutory authority does not exist. Acquisitions from required sources of supply under FAR Part 8 have their own specific statutory authority.

c. INTRA-AGENCY PROCEDURES UNDER THE ECONOMY ACT

FAR 17.500(a) provides that intra-agency acquisitions are exempt from FAR Part 17.5 and are governed by agency regulations (i.e Army uses Military Interdepartmental Procurement Regulations (MIPR) procedures.)

d. GRANT AND COOPERATIVE AGREEMENT ACT

(1) On Feb. 3, 1978 Public Law 95-224, the Grant and Cooperative Agreement Act of 1977, became law. Its primary purpose as stated in 31 USC 6301 was housekeeping, standardizing existing government practices. The statute attempted to categorize various forms of government contractual arrangements into 4 categories (5 categories if real estate is considered):

(a) Procurement contracts (31 USC 6303): *"(1) the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; or (2) the agency decides in a specific instance that the use of a procurement contract is appropriate."*

(b) two classes of assistance agreements (31 USC 6304 (1) and 6305 (1): *"the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government;"*) which differ only in the level of substantial involvement that is expected:

(i) Grant agreements (31 USC 6304(2)): *"substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."*

(ii) Cooperative agreements (31 USC 6305(2)): *"substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."*

(c) Agreements excluded from being considered procurements, grants, or cooperative agreements by 31 USC 6302 (2): *"'grant agreement' and 'cooperative agreement' do not include an agreement under which is provided only –*

- (A) direct United States Government cash assistance to an individual;*
- (B) a subsidy;*
- (C) a loan;*
- (D) a loan guarantee; or*
- (E) insurance."*

(d) Agreements for personal property are not included in 31 USC 6302-6305 – an "Other agreements" category for personal property; and

(c) Real estate agreements not included in 31 USC 6302-6305.

[Although the term "lease" is used in reference to procurement contracts, the better construction of 31 USC 6303 (1), 6304 (1), 6305 (1) is that a lease of personal property is meant rather than a lease of real property. Real property in the federal government is managed under a separate group of statutes, and usually personal and real property are NOT covered by the same statutes, unless a specifically stated contrary intent is provided in the statute. See Title 43 USC Public Lands (GSA, BLM), and 10 USC 2662 ff. (Chap. 159) (DOD) for major collections of federal real property law. Civil works real property law is found in various civil works sections in Title 33 USC intermixed with other civil works statutes. Other federal agencies also have real property law sections intermixed with their agency statutes. Perhaps more significantly, in the long 12-plus centuries of Anglo-Saxon law, personal and real property have always been treated as separate species of property, operating under often-similar but always distinct rules of law. As a consequence, the presumption is that the two species of property are NOT covered by the same statute(s) unless a contrary intent is specifically stated, or the context shows otherwise (e.g. in tax law, all classes and species of property are included in many tax sections where the intent is to tax everything taxable.)]

2. MISSION:

Agency missions are assigned by statute.

a. TWO MAJOR CLASSES OR TYPES OF CONTRACTING AGREEMENTS

The Army Corps of Engineers carries out its mission largely through contracting type activities. The contracting types of activity fall generally into 2 classes, cooperative agreements and procurement contracts. The former is (1) with our agency's partners and sponsors in a concerted effort to achieve common goals and missions; and the latter (2) with other entities to procure supplies, services, and construction work.

(1) DISTINCTIONS BASED UPON PRIMARY PURPOSE

The nature of the first category of work is assistance-type of work that supports and stimulates related activities in our partners and sponsors. Even though the end result of the cooperative effort may be to procure supplies, services, or construction, the dominant factor of the effort is the joint activity and assistance aspect. This is reflected in the fact that usually the work must be done with a particular partner or sponsor or other cooperating entity.

The nature of the second category of work is that the dominant purpose is the procurement of supplies, services, and/or construction work, and who the contractor is is relatively insignificant.

(2) DISTINCTIONS BASED UPON NATURE OF CONTRIBUTIONS

A secondary distinction between assistance-type work and procurement work lies in the types of contributions by the government. In the second, procurement category of work, the government typically provides (1) money, (2) land if services or construction is required, and (3) other forms of contribution like supplies and government personnel and resources only rarely (except for construction contracts). In addition the contractor expects 100% reimbursement of his costs.

In the assistance-type of agreement, (1) money is usually transferred, but (2) other forms of contribution are also typical, including (a) personnel time and effort, (b) shared supplies and equipment, and (3) use of government facilities and land. Moreover the other entities are expected usually to contribute their resources and money to the project, without expectation of 100% reimbursement of their costs.

(3) DISTINCTIONS BASED UPON TYPE OF MUTUAL INVOLVEMENT

A third type of distinction lies in the type of mutual involvement. In a procurement contract, government involvement is targeted toward getting what the government requires and needs, and typically involves inspection-type activities. In other than a research and development contract, the end product is usually also well defined.

In an assistance-type cooperative agreement, government involvement is focused on the partnership relationship, and working together to achieve something of interest to all entities concerned. The dialogue is not limited to a inspection relationship, but goes beyond to a true sharing of data and interests in a common development effort. Often the goal is to develop something new and not well defined when the cooperative relationship first started.

b. FACTORS TO EXAMINE TO DETERMINE WHICH TYPE OF CONTRACTUAL RELATIONSHIPS AND TYPES OF AGREEMENTS IS PREFERRED IN A SITUATION

From the foregoing distinctions, it is clear that the relationships between procurement contracts and cooperative agreements are not always clear because both relationships involve (1) some joint activities between the contractual parties and (2) usually involve some transfer of supplies, services, construction, and/or other property.

Rather a careful analysis of the (1) purpose of the relationship (acquisition or assistance), (2) the importance of who the other party is (contractor or essential partner or sponsor), (3) the nature of contributions to the effort (solely money or a mixture of money, property, and other resources), (4) the amount and level of cost reimbursement (100% in procurement contracts usually; less than 100% typically in cooperative agreements), (5) the type of personnel interaction (purely inspection of contract work or a broader, more collaborative effort to accomplish the work), and (6) the particular statutory authorizations involved (procurement contracts require no specific mission authorization to buy supplies, services, or construction; cooperative agreements require specific statutory authority for the common mission) are essential to ascertain what type of agreement is being undertaken.

The foregoing list of distinctive factors goes beyond the statutory definitions (primary purpose of procurement or assistance) to flush out the other identifying factors that are found in some of the various specific statutory authorities involved in this issue. In many cases, the authorizing mission statutes leave no room for choice in the type of contracting vehicle chosen.

3. OPERATIONS:

a. GENERAL

(1) PROCUREMENT CONTRACTS

Almost all government entities have broad statutory authority to procure supplies and services to accomplish their missions.

The General Accounting Office (GAO) in Vol. 1, Chap. 4 of its Principles of Federal Appropriation Law, 2nd Edition, states 3 legal requirements for the availability of appropriations or money for government purchases:

- "(1) The purpose of the obligation or expenditure must be authorized;*
- (2) The obligation must occur within the time limits applicable to the appropriation; and*
- (3) The obligation and expenditure must be within the amounts Congress has established."*

The GAO goes on to state the most fundamental authorization and limitation on federal expenditures, by procurement contract or otherwise:

"31 USC 1301(a): Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." 2 Stat. 535 (1809).

The GAO then goes on to discuss the necessary expense doctrine.

"The next point to emphasize is that 31 USC 1301(a) does not require, nor would it be reasonably possible, that every item of expenditure be specified in the appropriation act. While the statute is strict, it is applied with reason.

The spending agency has reasonable discretion in determining how to carry out the objects of the appropriation. This concept, known as 'the necessary expense doctrine,' has been around almost as long as the statute itself. An early statement of the rule is contained in 6 Comp. Gen. 619,621 (1927):

"It is a well-settled rule of statutory construction that where an appropriation is made for a particular object, by implication it confers authority to incur expenses which are necessary or proper or incident to the proper execution of the object, unless there is another appropriation which makes more specific provision for such expenditures, or unless they are prohibited by law, or unless it is manifestly evident from various precedent appropriation acts that Congress has specifically legislated for certain expenses of the government creating the implication that such expenditures should not be incurred except by its express authority."

One of the most important principles of law from the above discussion is that federal agencies and their employees have discretion in carrying out the law. As the GAO states, it would not be "reasonably possible" for Congress to specify every last expenditure or other item of detail involved in the process of reasonably executing and carrying out a statute.

Another critical principle of law from the same discussion is that as long as the agency officials carrying out a particular activity deem an expenditure reasonably "necessary" for the proper execution of the object or purpose of a statute (absent one of the exceptions listed in the discussion above), then their discretionary decision controls. This is important because people can reasonably differ in what is "reasonably necessary", and the discretion of the duly-authorized statutory actors or employees controls. If two people each making independent decisions on the same statute reach contrary conclusions and are otherwise authorized to make agency spending decisions, then both can be "right" even though they disagree on what is "right."

Obviously, for reasons of agency consistency, such polar opposite decisions are not desirable from an administrative standpoint. However, from a legal standpoint, they are proper, as long as the persons making them had (1) legal authority and (2) reasonably arrived at their conclusions, even though in total disagreement with each other.

A classic example of this delegated decision-making authority with regard to contract issues is found in 41 USC 605(b), part of the 1978 Contract Disputes Act:

"The contracting officer's decision on the claim shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency, unless an appeal or suit is timely commenced as authorized by this chapter."

The GAO in 63 Op. Comp. Gen. 338, 1984, stated that:

"Since subsection (a) of this section provides that all claims by contractor against government should be submitted to contracting officer for decision, General Accounting Office is not proper tribunal for resolving such disputes." [quoted at note 23, 41 USCA 605]

As a result of these decisions and other law and case law, most federal agencies routinely purchase supplies and services without any great reflection upon their statutory authority to do so, except when particular procurements involve the gray areas of their authority limits.

(2) COOPERATIVE AGREEMENTS

Unlike procurement contracts, it is general law that agencies must have specific statutory assistance authority before they can enter into cooperative agreements. B-218816, 65 Comp. Gen. 605, June 2, 1986, Council on Environmental Quality.

However, in the 20 years that have passed since the enactment of the Grant and Cooperative Agreement Act on Feb. 3, 1978, Congress has continued to authorize more and more assistance relationships, so that today there are over 100 such authorizations.

The authorizations that concern the Corps are those either directly to the Corps, the DOD partners of the Corps, or the other federal agencies who partner with the Corps. While it is obvious that the authorizations to the Corps and its DOD partners are significant, because the Corps does much of DOD's construction work, it is not so obvious that the authorizations to civilian agency partners of the Corps are also significant. Thanks to the expansion of environmental and related socio-economic programs, most Corps and DOD projects have to go through a gauntlet of approvals from other federal and state agencies. Many of these approval processes involve assistance relationships between other federal agencies and non-federal agencies. These assistance relationships become very significant when Congress waives federal sovereign immunity, as it has on many major environmental statutes, and subjects Corps projects to approvals by federal-state assistance relationships.

In the parts that follow, this paper documents the major defense assistance authorizations (these have greatly increased in number in recent years – and are applicable to Corps operations either generally or with regard to specific defense programs that the Corps may participate in), the major civil works assistance authorizations (also a growing number), and finally some of the more important assistance authorizations involving other federal agencies that partner with the Corps.

In addition, related authorizations (e.g. voluntary services authorizations) are also included where they play a significant and related role to cooperative agreements. These related authorizations are important because while they do not authorize cooperative agreements as defined by 31 USC 6305, they do create relationships that are very similar in nature and function. Functional equivalence is very important from a mission standpoint, as the mission often does not care what method is used, as long as functional equivalence in results is obtained.

RELEVANT COMPTROLLER GENERAL RULINGS

In a separate document, a study of all published (electronically accessible) Comptroller General rulings on cooperative agreements through 1997 was made. It is useful at this point to summarize all of the decisions where the Comptroller General discussed (and usually affirmed) agencies' assistance (cooperative agreement) authorities to confirm just how broad and general this assistance authority is within the Federal Government:

Cooperative agreement assistance authority was found numerous times even before the Feb. 3, 1978 Cooperative Agreement Act:

1945 – B-49330, 24 Comp. Gen. 802, May 4, 1945, G.O. Lathem, Dept. of Agriculture, affirmed shared federal/non-federal funding for federal employees by cooperative agreement.

1948 – B-78055, 28 Comp. Gen. 38, July 22, 1948, Sec'y. of Interior, affirmed authority to sell excess hydropower in commercial marketplace as incidental activity to federal generation activity.

1956 – B-127113, May 3, 1956, Sec'y. of Interior, affirmed cooperative agreements for fire-fighting.

1957 – B-132488, 37 Comp. Gen. 101, Aug. 12, 1957, Sec'y. of Interior, again affirmed the pooling of federal and non-federal funds to pay federal employees.

1960 – B-165972, 40 Comp. Gen., 81, Aug. 9, 1960, Sec'y. of Agriculture, affirmed shared federal and non-federal funding of shared road construction and recapturing construction costs as "tolls".

1963 – B-150239, 42 Comp. Gen. 289, Dec. 6, 1962, affirmed federal authority to maintain local roads when part of federal road system.

1966 – B-158801, May 9, 1966, Sec'y. of Agriculture, affirmed Forest Service and timber company road sharing agreement modifications.

1970 – B-164660, Oct. 2, 1970, Pickett, Andereck, Hauck, & Sharp, enforced a cooperative agreement for peaking capacity.

1975 – B-173240, June 16, 1975, Overseas Private Investment Corp., affirmed federal and non-federal reinsurance agreements.

1976 – B-184936, 55 Comp. Gen. 1059, May 3, 1976, Forest Products Laboratory, affirmed most of the authority claimed by the Forest Service to jointly fund and conduct forestry research with the Univ. of Wisconsin; and B-166506 affirmed Forest Service authority to share water quality facilities with others.

1977 – B-189970, Dec. 16, 1977, US Forest Service, interpreted a Forest Service road share agreement to settle a dispute.

Following the Feb. 3, 1978 Cooperative Agreement Act, the number of decisions on authority questions has vastly declined, as most of the reported decisions involved disappointed non-selectees for cooperative agreements and grants. However, there is still a series of authority decisions.

1981 – B-202463, Mar. 24, 1981, Cong. Don Fuqua, answered questions from Congress about synthetic fuel facility transfers by cooperative agreements.

1981 – B-200588 L/M, Mar. 26, 1981, John Rose, PM, Chicago RO, answered a series of EPA and Agriculture questions about how to transfer their joint pesticide program management to the states.

1982 – B-206272, 61 Comp. Gen. 637, 82-2 CPD 270, Sep. 24, 1982, Civic Action Institute and B-206272.2, 82-2 CPD 399, Nov. 2, 1982, Civic Action Institute, distinguished between situations where services were provided to 3rd parties: if the US was involved in a sharing agreement with a 2nd party to provide the services, then a cooperative agreement was appropriate; if the US merely acquired services from a 2nd party and then sought to distribute them independently to a 3rd party, then services procurement contracts were in order.

There was no noticeable change in the Comptroller General rulings after the passage of the 1984 Competition in Contracting Act (CICA).

1985 – B-217093, Jan. 9, 1985, Sen. Roth, affirmed the authority of the Japan-US Friendship Commission to transfer funds to the Dept. of Education.

1986 – B-218816, 65 Comp. Gen. 605, June 2, 1986, CEQ, is a unique decision that held that the Council of Environmental Quality, a White House office, had no assistance authority and therefore could not enter into cooperative agreements.

1986 – B-222665, July 2, 1986, Cong. Mitchell, affirmed unique BIA authority under the Self Determination Act to continue to use procurement contracts with Native American tribes when under more general federal law cooperative agreements should have been used.

1987 – B-222908, Oct. 17, 1986, Cong. Miller, advised the Western Power Authority that its statutory authority did not include buying and selling hydropower from/to Canadian utilities (like BPA can).

1987-1988 – A series of three MARAD decisions (B-227084, 87-1 CPD 475, May 5, 1987, Ship Analytics, Inc., B-230647, 88-2 CPD 37, July 12, 1988, Ship Analytics, and B-227084.6, Dec. 19, 1988, MARAD) distinguished between when MARAD was sharing the development and use of its computer simulators with private sources (cooperative agreements) and merely selling services on the simulators to other federal agencies (procurement contracts).

1987 – B-226922, July 23, 1987, EPA, affirmed EPA's authority to enter into cooperative agreements with the various states for the joint administration of CERCLA. Given the nature of CERCLA litigation, EPA probably sought the advance ruling from GAO simply to preclude additional litigation disputes in its CERCLA litigation, a wise move on EPA's part.

1991 – B-241708, Sep. 27, 1991, BIA, again affirmed the broad cooperative agreement authorities of the Depts. of Agriculture and Interior in fire-fighting activities.

Out of all of these Comptroller General decisions, it is significant that only one federal agency, CEQ, a White-House-based coordinating and policy-making body, has been held to have no assistance authority. The clear weight of 50 plus years of Comptroller General decisions is that most federal agencies involved in domestic programs have been given assistance authority. The Corps of Engineers civil works program is clearly a program of assistance, as the following discussion will show. In addition, a large number of other agencies' authorities are listed to indicate just how general and common it is for federal agencies with overlapping domestic missions to have similar assistance authorities.

THE UNIQUE LOCAL OREGON INTERGOVERNMENTAL ENVIRONMENT

In the examples that follow, most of the general authorities are listed. In addition, because the Corps civil works program is primarily focused on water resources and because Oregon has probably more specifically-regulated by federal (and state) law waters than any other state in the Union, extensive listings of federal authorities unique to Oregon and its border areas are provided, as representative of the many types of federal regulation one deals with in the civil works program. Unlike many other jurisdictions, in Oregon most civil works activities co-exist with other specific federal and state law authorities, making for a situation in which "assistance" agreement relationships exist almost everywhere. This is a result not only of the massive federal regulatory environment on Oregon's waters, but also the fact that about 80% of Oregon's relatively large landmass is federal owned or controlled (as is also typically the case in most other Western states.) This massive overlap of federal statutory authorities and multiple federal agency jurisdictions has, out of necessity, created a work environment where the Corps must coordinate almost every activity with at least one other federal agency, if not a multitude of other federal and state agencies.

The principal agency players include EPA Region 10 (environmental issues that dominate everything), NMFS and USFWS (fish and wildlife issues, including Endangered Species Act (ESA), that also dominate all natural resources activities), USFS and BLM (the two largest federal land managers in Oregon, whose properties surround or are even within Corps projects), the BIA (the federal agency that manages the many Indian reservations and off-reservation tribal lands in Oregon), the USCG (the Corps' partner in navigable waters regulation and maintenance), the US Geological Survey (a companion federal engineering and science organization to the Corps), the BPA and the BOR (statutory partners of the Corps in Northwest hydropower operations), the NRCS (former SCS), and the NPS (whose parks and monuments are found in Oregon and neighboring states).

Further, since by various federal laws and various waivers of federal sovereignty, Congress has teamed state agencies with similar functions with federal agencies, there are a number of state agencies with whom everything must also be coordinated under federal law. The principal state agencies in Oregon involved in this Congressionally-mandated teaming include: Division of State Lands (DSL) (state land manager and controller of state-owned submerged lands), Dept. of Environmental Quality (DEQ), Dept. of Fish and Wildlife (DFW), State Marine Board (state Coast Guard counterpart), Depts. of Forestry and Agriculture (Forest Service and Agriculture counterparts), Water Resources Dept. (WRD – the state water rights and dam regulation body), and the State Police (source of most of our contracted law enforcement assistance.)

There are also about 10 federally-recognized tribes in Oregon and adjacent Washington areas. Of these, four tribes have special off-reservation treaty rights in the Corps' Columbia River projects in Portland District: (1) the Confederated Bands and Tribes of the Yakama Indian Nation, (2) the Confederated Tribes and Bands of the Umatilla Reservation, (3) the Confederated Tribes and Bands of the Warm Springs Reservation, and (4) the Nez Perce Tribe. These four tribes have established the Columbia River Intertribal Fish Council (CRIFC) as their designated representative for many fisheries and law enforcement matters. These four tribes are the beneficiaries of the "in lieu" sites program and the Columbia River Fishing Treaty Access Sites (CRFTAS) program. In addition to the provisions of the various treaties and case law decisions, Congress has also added specific legislative provisions to many local federal programs protecting and expanding the rights of these tribes.

b. TITLE 10 USC ASSISTANCE RELATIONSHIPS (MILITARY COOPERATIVE AGREEMENTS)

(1) 10 USC 1588 AUTHORITY TO ACCEPT VOLUNTARY SERVICES, Pub. L. 98-94, Sep. 24, 1983, as amended.

(a) Authority to accept services — Subject to subsection (b) and notwithstanding section 1342 of title 31, the Secretary concerned may accept from any person the following services:

(1) Voluntary medical services, dental services, nursing services, or other health-care related services.

(2) Voluntary services to be provided for a museum or a natural resources program.

(3) voluntary services to be provided for programs providing services to members of the armed forces and the families of such members, including the following programs:

(A) Family support programs.

(B) Child development and youth services programs.

(C) Library and education programs.

(D) Religious programs.

(E) Housing referral programs.

(F) Programs providing employment assistance to spouses of such members.

(G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.

(b) Requirements and limitations—

(1) The Secretary concerned shall notify the person of the scope of the services accepted.

(2) With respect to a person providing voluntary services accepted under subsection (a), the Secretary concerned shall —

(A) supervise the person to the same extent as the Secretary would supervise a compensated employee providing similar services; and

(B) ensure that the person is licensed, privileged, has appropriate credentials, or is otherwise qualified under applicable law or regulations to provide such services.

(3) With respect to a person providing voluntary services accepted under subsection (a), the Secretary may not —

(A) place the person in a policy-making position; or

(B) except as provided in subsection (e), compensate the person for the provision of such services.

(c) Authority to recruit and train persons providing services—The Secretary concerned may recruit and train persons to provide voluntary services accepted under subsection (a).

(d) Status of persons providing services—

(1) Subject to paragraph (3), while providing voluntary services accepted under subsection (a) or receiving training under subsection (c), a person, other than a person referred to in paragraph (2), shall be considered to be an employee of the Federal Government only for the purposes of the following provisions of law:

(A) Subchapter I of chapter 81 of title 5 (relating to compensation for work-related injuries).

(B) Section 2733 of this title and chapter 171 of chapter 28 (relating to claims for damages or loss).

(C) section 552a of title 5 (relating to maintenance of records on individuals). [Privacy Act]

(D) Chapter 11 of title 18 (relating to conflicts of interest).

(2) Subject to paragraph (3), while providing a nonappropriated fund instrumentality of the United States with voluntary services accepted under subsection (a), or receiving training under subsection (c) to provide such an instrumentality with services accepted under subsection (a), a person shall be considered an employee of that instrumentality only for the following purposes:

(A) Subchapter II of chapter 81 of title 5 (relating to compensation of nonappropriated fund employees for work-related injuries).

(B) Section 2733 of this title and chapter 171 of title 28 (relating to claims for damages or loss.)

(3) A person providing voluntary services accepted under subsection (a) shall be considered to be an employee of the Federal Government under paragraph (1) or (2) only with respect to services that are within the scope of the services so accepted.

(4) For purposes of determining the compensation for work-related injuries payable under chapter 81 of title 5 (pursuant to this subsection) to a person providing voluntary services accepted under subsection (a), the monthly pay of the person for such services shall be deemed to be the amount determined by multiplying—

(A) the average monthly number of hours that the person provided the services, by

(B) the minimum wage determined in accordance with section 6 (a)(1) of the Fair Labor Standards Act of 1938 (29 USC 206(a)(1)).

(e) Reimbursement of incidental expenses— The Secretary concerned may provide for reimbursement of a person for incidental expenses incurred by the person in providing voluntary services under subsection (a). The Secretary shall determine which expenses are eligible for reimbursement under this subsection. Any such reimbursement may be made from appropriated or nonappropriated funds.

(2) CHAPTER 138, 10 USC 2341 FF., COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES

This Chapter has 2 subchapters, I—Acquisition and Cross-Servicing Agreements covering logistic support, supplies, and services for elements of the armed forces deployed outside the United States, and II – Other

Cooperative Agreements, a listing of specific types of agreements (Sections 2350a through 2350k) including cooperative research and development (2350a), cooperative logistic support agreements (2350d), real property agreements (2350g), foreign contributions (2350i), and relocations of armed forces overseas (2350k).

(3) 10 USC 2358, RESEARCH AND DEVELOPMENT PROJECTS, PROSECUTION BY CONTRACT, COOPERATIVE AGREEMENT OR GRANT

(a) Authority – The Secretary of Defense or the Secretary of a military department may engage in basic research, applied research, advanced research, and development projects that—

(1) are necessary to the responsibilities of such Secretary's department in the field of research and development; and

(2) either—

(A) relate to weapon systems or other military needs; or

(B) are of potential interest to the Department of Defense.

(b) Authorized means—The Secretary of Defense or the Secretary of a military department may perform research and development projects –

(1) by contract, cooperative agreement, or grant, in accordance with chapter 63 of title 31;

(2) through one or more military departments;

(3) by using employees and consultants of the Department of Defense; or

(4) by mutual agreement with the head of any other department or agency of the Federal Government.

(c) Requirement of potential Department of Defense interest—Funds appropriated to the Department of Defense or to a military department may not be used to finance any research project or study unless the project or study is, in the opinion of the Secretary of Defense or the Secretary of that military department, respectively, of potential interest to the Department of Defense or to such military department, respectively.

(d) Additional provisions applicable to cooperative agreements – Additional authorities, conditions, and requirements relating to certain cooperative agreements authorized by this section are provided in sections 2371 and 2371a of this title.

(4) 10 USC SECTION 2371: RESEARCH PROJECTS: TRANSACTIONS OTHER THAN CONTRACTS AND GRANTS (AND COOPERATIVE AGREEMENTS):

This section has additional authority both for cooperative agreements and for transactions (other than contracts, cooperative agreements, and grants):

(a) Additional forms of transactions authorized—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

Subsections (d), (e), and (f) provide for cost-shared cooperative agreements and other transactions agreements. The requirement to use this special authority is that *“the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.”*

(5) 10 USC SECTION 2371a: COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS UNDER STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980

The Secretary of Defense, in carrying out research projects through the Defense Advanced Research Projects Agency, and the Secretary of each military department, in carrying out research projects, may

permit the director of any federally funded research and development center to enter into cooperative research and development agreements with any person, any agency, or instrumentality of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 USC 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 USC 3710, 3710a).

(6) 10 USC 2391 MILITARY BASE REUSE STUDIES AND COMMUNITY PLANNING ASSISTANCE

This BRAC program section also provides for the use of cooperative agreements and grants in Subsection (b). Those involved in BRAC base closures may use this authority.

(7) 10 USC 2411 FF, CHAP. 142, PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM

This is an assistance program targeted at states, local governments, tribal governments, and private non-profit organizations (Sec. 2411) to provide assistance through the DLA procurement programs (Sec. 2411-2412). Assistance is to be equally divided among DCAS regions (Sec. 2415). Sec. 2413 specifically discusses terms of optional cooperative agreements.

(8) 10 USC 2511 FF, SUBCHAP III, DUAL USE TECHNOLOGIES SUPPORT PROGRAMS

This program at Sec. 2514(c) and 2519 authorizes defense labs to carry out cooperative agreement programs.

(9) 10 USC 2541, CHAP 152, ISSUE OF SUPPLIES, SERVICES AND FACILITIES

This is a miscellaneous collection of assistance programs within DOD.

(10) 10 USC 2572 FF, CHAP 153, EXCHANGE OF MATERIAL

This is another assistance program.

(11) 10 USC 2605, CHAP 155, ACCEPTANCE OF GIFTS AND SERVICES

This is another collection of assistance-type programs.

(12) 10 USC 2661 FF, CHAP 159 – REAL PROPERTY

This chapter contains several authorizations for cooperative agreements, including Sec. 2681 (sharing of test and evaluation installations), Sec. 2684 (cooperative agreements for the management of cultural resources), Sec. 2692 (storage and disposal of nondefense toxic and hazardous materials), and Sec. 2694 (cooperative agreements for conservation and cultural activities.) These authorities are restricted in many cases to military bases only.

(13) 10 USC 2701 FF, CHAP 160, ENVIRONMENTAL RESTORATION

This chapter also authorizes cooperative agreements under Sec. 2701(d) and elsewhere. Sec. 2702 (c) also authorizes cooperative agreements.

(14) 16 USC 670a CONSERVATION PROGRAMS ON MILITARY RESERVATIONS

16 USC 670a-670b DOD COOPERATIVE PLANS ON MILITARY RESERVATIONS
These are NOT cooperative agreements (670a (e)). They are similar in many regards.

16 USC 670c-1 DOD COOPERATIVE AGREEMENTS ON MILITARY RESERVATIONS

In addition to cooperative plans, DOD is authorized to enter into cooperative agreements for maintenance, research, and improvement of natural resources on military reservations.

c. CIVIL WORKS ASSISTANCE AUTHORITIES UNDER 33 USC

(1) The whole character of the civil works program authorized for the US Army Corps of Engineers in Title 33 USC is an assistance program. And since the 1986 Water Resources Development Act (WRDA), the Congressionally-required cost-sharing sponsorship agreements are cooperative agreements. The following list contains all of the major (non-single-project) authorizations in 33 USC for civil works projects. Some of the listed sections discuss cooperative agreements. Others do not. But all have the same assistance character, which makes them eligible for cooperative agreement treatment.

- (a) 33 USC 2311 (e) (harbor projects)
- (b) 33 USC 2313 (j) (flood control projects)
- (c) 33 USC 2215 (Feasibility studies and planning, engineering, and design (PED))
- (d) 33 USC 2233 (scheduling agreements for environmental studies and other reasons)
- (e) 33 USC 2240 (grants for emergency response services)
- (f) 33 USC 2261 (territorial projects studies)
- (g) 33 USC 2262 (technical assistance cost-shared for hydropower studies)
- (h) 33 USC 2307 (ice control)
- (i) 33 USC 2309a (environmental improvements to projects)
- (j) 33 USC 2313-2313b (collaborative research and development by Corps labs)
- (k) 33 USC 2314a (technical assistance program)
- (l) 33 USC 2317 (wetlands restoration program)
- (m) 33 USC 2320 (protection of recreational and commercial uses)
- (n) 33 USC 2323 (Technical assistance to private entities)
- (o) 33 USC 21323a (Interagency and international support authority)
- (p) 33 USC 2324 (Reduced price water supply storage)
- (q) 33 USC 2326, 2326a (Beneficial uses of dredge material, and dredge material disposal partnerships)
- 2326b (Sediment management cooperative agreements)
- (r) 33 USC 2328 (Challenge cost-share cooperative agreements)
- (s) 33 USC 2329 (International outreach program)
- (t) 33 USC 2330 (Aquatic ecosystem restoration)

In addition specific project agreements and studies are authorized (e.g. 33 USC 2266, Canadian tidal power study; 33 USC 2267 NY Bight study) by WRDA 1986 and subsequent laws.

Even the earlier authorities were assistance statutes, although many did not require cost-sharing (but often did require locals to provide real estate):

- 33 USC 426a, 426b, 426e, 426f (coastal erosion control assistance)
- 33 USC 426g (coastal erosion small projects authority)
- 33 USC 426h (national erosion plan authorization; agreements with many)
- 33 USC 426i (shore damage prevention & mitigation from Corps projects; cost share; 426i-1 locals may do work for fed reimbursement)
- 33 USC 426j (beach sand replenishment; 50% cost share)
- 33 USC 426m (collection & removal of drift)
- 33 USC 426n (50% cost share for new technical assistance)
- 33 USC 467 ff. (dam safety inspection program)
- 33 USC 547 (old local cooperation recommendations requirements)
- 33 USC 557b (sale of publications, charts, etc. to public)
- 33 USC 558b (land exchanges)
- 33 USC 558c (granting of easements over federal lands)
- 33 USC 559 (use of rent for federal equipment)
- 33 USC 560 (private contributions; return of excess)

33 USC 565	(Improvements by others)
33 USC 569c	(volunteer services' acceptance)
33 USC 577	(Sec. 107 small navigation projects)
33 USC 578	(disposal of real estate to port districts)
33 USC 591-598	(condemnation; condemnation for others)
33 USC 603	(new tech. assistance; 50% cost share)
33 USC 603a	(new navigation snag & debris removal)
33 USC 608	(1888 general fishway authorization)
33 USC 609	(hydropower features in projects)
33 USC 610	(control of aquatic growth; 30% cost share)
33 USC 621	(continuing contract authority)
33 USC 701 ff.	(flood control generally)
33 USC 701a-1, b, b-1, b-2	(division of work among Army and Agriculture)
33 USC 701b-11, b-13,c, c-1, c-2, c-3	(lands, easements, etc; land deals with sponsors; sponsors may do project)
33 USC 701f-3	(flood prevention)
33 USC 701g	(snag & debris clearing)
33 USC 701h, h-1	(contributions by others)
33 USC 701i	(evacuation as flood prevention measure)
33 USC 701j	(hydropower features, penstocks authorized)
33 USC 701n	(flood emergencies; flood prevention & restoration)
33 USC 701p	(RR bridge alterations)
33 USC 701q	(Sec. 9 discretionary hwy, RR, Utility authority)
33 USC 701r, r-1	(public roads, works, nonprofits protection)
33 USC 701s	(small flood control projects)
33 USC 701t	(flood control emergency fund)
33 USC 702a-8	(levee roads)
33 USC 702a-9, 702b, 702c	(local cooperation requirements)
33 USC 702e	(mapping services from other federal agencies)
33 USC 706	(Dept. of Commerce Hydro network; interagency sharing)
33 USC 708	(surplus water sale)
33 USC 709	(flood control authority of Sec. of Army over all dams)
33 USC 709a	(flood control data for other entities)

(Specific site authorities not listed, including Miss. R. Basin authorities.)

Additional and related authorities are also important:

33 USC 2232 (Sec. 204)	Sponsor does work and gets some reimbursement
33 USC 2263	(Fish and wildlife studies are joint activities)
33 USC 2280	(maximum ceiling on costs of project)
33 USC 2282	(cooperative efforts on feasibility reports)
33 USC 2283	(cooperative fish & wildlife mitigation)
33 USC 2286 (Sec. 1146)	In accordance with Power Planning Council Act, civil works projects can accept funds from any entity without dollar limitation.
33 USC 2296	Civil works can accept lands from anybody for public recreation.
33 USC 2305	FHA funds don't count as federal funds.
33 USC 2319	In drawing up reservoir management plans, public hearings and other consultation are required.
33 USC 2321a	Hydro electric facilities can be uprated.
33 USC 2325	Voluntary contributions may be accepted for environmental and recreation projects.

The regulatory jurisdiction of the Corps under civil works has also not been listed. Regulatory jurisdiction is a specialized form of "assistance" usually not involving cooperative agreements other than working

agreements among various regulatory agencies. These working agreements deal primarily with delineating jurisdiction and procedures of common interest, rather than transferring anything to anyone.

The Corps has always restricted its statutory authority by policy guidance, found in documents like the Digest of Water Resources Policies and Authorities, EP 1165-2-1 (latest edition).

In addition, a number of civil works authorizations are found in other titles of USC.

42 USC 1962d-5 (Section 201 projects): SMALL NAVIGATION, FLOOD CONTROL, AND SHORE PROTECTION PROJECTS

42 USC 1962d-5a provides for State reimbursements.

42 USC 1962d-5b provides for written agreements with sponsors.

42 USC 1962d-5d (Rent-a-cop programs)

42 USC 1962d-5e (Wetland programs)

42 USC 1962d-5f (Beach Nourishment)

42 USC 1962d-5g (Hydropower development)

42 USC 1962d-16 (Comprehensive water basin plans; 50% cost-share state assistance authorized)

d. GOVERNMENT-WIDE ENVIRONMENTAL AND OTHER SOCIO-ECONOMIC PROGRAMS

(1) ENVIRONMENTAL AND RELATED ASSISTANCE AND SUPPORT PROGRAMS

Environmental and related programs fall into the assistance area of contractual agreements when Congress directs that federal agencies comply with others' laws, regulations, and fee schedules. The fee becomes the thing of value transferred, and the objective of the statute becomes the public purpose of support or stimulation. Since most of these mandated regulatory programs require constant oversight by the other agency, the relationship also is one of substantial involvement. Thus all of the essential elements of a cooperative agreement under 31 USC 6305 are met, as long as the fee and oversight relationship is supported by some sort of contractual relationship document.

While the federal statutes imposing this type of regulatory assistance programs on federal agencies seldom ever discuss or mandate a written contractual relationship document, the reality is that most state and related regulators require written commitments by the regulated as to how they will comply with the regulatory scheme. Oregon DEQ, the delegate of EPA in Oregon for most EPA programs, typically has its regulated entities sign up to a contractual form that spells out fees paid to Oregon and what the regulated entity will do to comply with the law in exchange for Oregon DEQ agreeing not to prosecute the regulated entity in a criminal proceeding. Washington uses similar agreements usually classified as "permits" as does EPA itself.

But regardless of the names given to the documents, as long as they require (1) payment of a fee, (2) written commitment to performance, and (3) some sort of continuing oversight, the three essentials of a cooperative agreement are given.

(a) WATER QUALITY ASSISTANCE PROGRAMS

The Clean Water Act at 33 USC 1323 (a), federal facilities pollution control, provides in part:

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any

nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any record keeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner.

(b) NATIONAL COASTAL MONITORING, 33 USC 2803

The National Coastal Monitoring statute assigns primary responsibility to other federal agencies, but allows them to extend the federal Memorandum of Understanding "to include other appropriate Federal agencies." (33 USC 2803(d)(6)). In view of the Corps coastal work in inshore areas, the Corps is an "appropriate" other Federal agency, and is in fact involved in some of the work undertaken under this statute under Economy Act agreements with EPA and NOAA. To the extent that non-Federal entities participate in the work, cooperative agreements are appropriate.

(c) COOPERATIVE RECREATION STUDY AUTHORITY – NATIONAL PARK SERVICE, 16 USC 17K, 17 L

16 USC 17k The Secretary of the Interior . . . is authorized and directed to cause the National Park Service to make a comprehensive study of, other than on lands under the jurisdiction of the Department of Agriculture, of the public park, parkway and recreational-area programs of the United States, and of the several States and political jurisdictions thereof, and of the lands throughout the United States which are or maybe chiefly valuable as such areas The said study shall be such as . . . will provide data helpful in developing a plan for coordinated and adequate public park, parkway, and recreational-area facilities for the people of the United States. . . . [T]he Secretary is authorized and directed, through the National Park Service, to seek and accept the cooperation and assistance of Federal departments or agencies having jurisdiction of lands belonging to the United States, and may cooperate and make agreements with and seek the assistance of other Federal agencies and instrumentalities, and of States and political subdivisions thereof and the agencies and instrumentalities of either of them.

16 USC 17l For the purpose of developing coordinated and adequate public park, parkway, and recreational-area facilities for the people of the United States, the Secretary is authorized to aid the several States and political jurisdictions thereof in planning such areas therein, and in cooperating with one another to accomplish these ends. . . .

(d) PROMOTION OF TOURIST TRAVEL BY DEPT. OF COMMERCE, 16 USC 18 FF.

16 USC 18 The Secretary of commerce shall encourage, promote, and develop travel within the United States

16 USC 18a . . . the Secretary is authorized to cooperate with public and private tourist, travel, and other agencies in the display of exhibits, and in the collection, publication, and dissemination of information

(e) PROMOTION OF MUSEUMS, 16 USC 18 FF.

The Secretary of the Interior through the National Park Service is authorized to promote federal museums, and to exchange and loan collections, as well as purchase items and collections and to accept donations.

(f) NATIONAL PARK FOUNDATION, 16 USC 19e ff.

This statute series authorizes and establishes the National Park Foundation, to assist in the mission of the National Park Service by accepting and administering gifts. This was done to allow acceptance of gifts not otherwise acceptable under normal appropriations, property management, and real estate processes and limitations and to provide relatively unlimited freedom to work with others in promoting national parks.

(g) OUTDOOR RECREATION PROGRAMS, 16 USC 460L ff.

This section is a mix of authorities to various agencies, including the Secretary of Interior, the Corps of Engineers, and other federal entities with outdoor recreation facilities or the potential for such facilities.

16 USC 460L-1 This section provides basic authority to Sec. of Interior, as well as basic assistance authority for cooperative agreements and basic inter-agency coordination authority.

16 USC 460L-5 is the Land and Water Conservation Fund that receives and pays user fee money to all of us various agencies in the outdoor rec business.

16 USC 460L-6a is the first of the user fee statutes. The Corps is included by name.

16 USC 460L-12 provides for outdoor rec and fish and wildlife enhancement at Corps-type projects. 16 USC 460L-15 is the real estate leasing authority that complements assistance agreements with the states and local sponsors under 460L-13 & 14.

(h) 16 USC 469, PUBLIC LAW 86-523 OF JUNE 27, 1960, PRESERVATION OF HISTORICAL AND ARCHEOLOGICAL DATA AT FEDERAL DAM SITES

Section 469b authorizes the Secretary of Interior to enter into cooperative agreements "*with any Federal or State agency, any educational or scientific organization, or any institution, corporation, association, or qualified individual*" in the administration of sections 469 to 469c-1 of Title 16 USC.

Under the Economy Act or under 16 USC 469b(1), the Secretary of Interior and his delegates may bring the Corps of Engineers entity building a dam site into a cooperative agreement for the purposes of these sections.

(i) AMERICAN BATTLEFIELD PROTECTION PROGRAM, 16 USC 469K

The key provision of this statute is Subsection (c):

(1) In general

Using the established national historic preservation program to the extent practicable, the Secretary of the Interior, acting through the American Battlefield protection Program, shall encourage, support, assist, recognize, and work in partnership with citizens, Federal, State, local, and tribal governments, other public entities, educational institutions, and private nonprofit organizations in identifying, researching, evaluating, interpreting, and protecting historic battlefields and associated sites on a National, State, and local level.

(2) Financial assistance

To carry out paragraph (1), the Secretary may use a cooperative agreement, grant, contract, or other generally adopted means of providing financial assistance.

(j) NATIONAL HISTORIC PRESERVATION ACT AMENDMENTS OF 1980, 16 USC 470 FF.

16 US 470-1 (6) states the assistance nature of the program.

16 USC 470a(b) authorizes the Secretary of Interior to enter into cooperative agreements with state historic preservation offices (SHIPO's) in connection with the purposes of the act. The implementing regulations at 36 CFR 800, 800.5 (c)(4), authorize Memorandums of Agreement (MOA's) between SHIPO's and the federal agencies. These MOA's are deemed contracts or Cooperative agreements under 16 USC 470a (b)(6).

16 USC 470a (h) authorizes the Secretary of the Interior in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of GSA to establish professional standards for the preservation of historical properties under Federal control or ownership.

16 USC 470f requires consultation with the Advisory Council on Historic Preservation of any undertaking by any federal agency that will impact anything listed in the National Register or eligible for listing in the National Register.

16 USC 470h-2 states the requirements for each federal agency to have its own historic preservation program. 16 USC 470h-4 requires agencies to follow professional standards in their preservation activities.

16 USC 470w-3 is the FOIA provision applicable to protecting archeological and historic information.

(k) ARCHEOLOGICAL RESOURCES PROTECTION ACT OF 1979, 16 USC 470aa

16 USC 470ii provides for uniform federal regulations to carry out this statute.

16 USC 470hh provides for the confidentiality of archeological information (a FOIA related matter).

16 USC 470jj provides authority to cooperate with private individuals.

(l) 36 CFR PART 79 CURATION REGULATIONS

Pursuant to these various archeological and historic preservation statutes, the Secretary of Interior has published regulations governing federal curation activities at 36 CFR Part 79. Section 79.6 (a)(3) of these regulations authorizes, among many alternatives, the use of cooperative agreements with curation entities.

(m) FISH AND WILDLIFE COORDINATION ACT, 16 USC 661-666c//
ENDANGERED SPECIES ACT, 16 USC 1531 ff (ESA)//
NATIONAL ENVIRONMENTAL POLICY ACT, 42 USC 4332 (NEPA)

16 USC 662 requires that, before taking any action proposing or authorizing the impounding, diverting, deepening, or otherwise controlling or modifying a body of water, a federal *department or agency first shall consult with the United States Fish and Wildlife Service [USFWS], Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of a particular State, wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development.* Subsection 662b requires that wildlife agency reports be attached to the proposal documents. Subsection 662e authorizes the transfer of project money from the proposing or authorizing agency to USFWS to pay for their report.

16 USC 664 authorizes the Secretary of Interior to enter into cooperative agreements with others to carry out this statute.

Consequently the result of the operation of this statute requires Economy Act and cooperative agreement contracts: (1) Economy Act agreements between USFWS and other federal agencies; and (2) cooperative agreements between USFWS and third parties. If USFWS uses the agency money to pay for the cooperative agreement work, then often the result is a 3-party cooperative agreement/Economy Act agreement combined: agency, USFWS, and third party.

Two other statutes also bring together the same federal agencies: (1) NEPA, 42 USC 4332 (C), and (2) ESA, 16 USC 1531 ff. Under NEPA (Nat'l Environmental Policy Act), the agency has to *consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.*

This brings 16 USC 662 into play (since USFWS has jurisdiction by law) and usually also ESA (Endangered Species Act). Under 16 USC 1532 –1533, the applicable Secretaries are Interior, Commerce, and Agriculture. Thus USFWS acts for the Sec. of Interior with regard to species within Interior's purview. 16 USC 1536 requires other federal agencies to consult with USFWS to avoid harming endangered species under USFWS jurisdiction. 16 USC 1535 authorizes cooperative agreements (again) between USFWS and the states.

The practical result is that 3 separate statutes (16 USC 662, 1535-1536, and 42 USC 4332) work together to cause cooperative agreement and Economy Act relationships among federal agencies and state agencies in the area of fish and wildlife protection.

16 USC 1536 (a)(1) . . . All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 1533 of this title.

15 USC 1531 (c)(2) contains the Congressional policy statement concerning assistance:
It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

When read together, these 3 statutes provide a broad authorization for fish and wildlife activities, as well as multiple statutory bases for cooperative agreements with state fish and wildlife agencies.

42 USC 4331 (a) contains a broad blanket statement of assistance purpose:

“ . . . it is the continuing policy of the Federal Government, in cooperation with State and local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare ”

(2) 42 USC 1856a RECIPROCAL FIRE-FIGHTING AGREEMENTS

This section is a blanket authority for ANY federal agency to arrange for reciprocal FIRE-FIGHTING support. These agreements are a special class of cooperative agreements.

There are special requirements for this authority, but it is a very broad authority.

(3) 42 USC 4701 FF. INTERGOVERNMENTAL PERSONNEL ACT

(4) 42 USC 5121 FF. DISASTER RELIEF AUTHORITIES, esp. 5146, 5149, 5150

(5) 42 USC 11001 FF. EMERGENCY PLANNING & COMMUNITY RIGHT TO KNOW

(6) 43 USC 666 (McCarran Act): SUBJECTS ALL FEDERAL WATER RIGHTS TO STATE PERMIT PROCESSES

e. OTHER AGENCY COOPERATIVE AGREEMENT PROGRAMS OF INTEREST TO OR RELATED TO THE CORPS CIVIL WORKS MISSION

There are 3 factors that link other agencies' authorities for cooperative agreements to the Corps:

- (1) common or similar mission;
- (2) geographical proximity; and
- (3) the Economy Act.

The third factor provides authority for federal agencies to contract together. The other 2 factors provide the reasons why contracting together is practical and beneficial.

Programs of interest are organized by department (Interior, etc.) and agency (National Park Service, etc.)

AGRICULTURE DEPARTMENT

FOREST SERVICE

16 USC 471ff General US Forest Service authorities.

16 USC 492 Authorizes USFS to furnish earth, stone, and timber to COE for civil works river & harbor projects.

16 USC 530 Authorizes the USFS to enter into cooperative agreements with state and local governments in the management of the national forests.

16 USC 539f Authorizes the USFS to enter into special fee-waiver agreements with non-profit organizations for the beneficial services to national forests.

16 USC 551a Authorizes the Secretary of Agriculture to enter into cooperative agreements with state and local governments for law enforcement within national forests.

16 USC 553 Authorizes the USFS to aid other federal agencies in their federal missions and to aid states in livestock management, fish and game protection, and forest fire prevention and management.

16 USC 557a Authorizes USFS to enter into contracts prior to receipt of appropriations as long as the contracts are conditioned upon the receipt of appropriations.

16 USC 558a, 558b, 558c Authorizes the use of volunteers; the reimbursement of their incidental expenses; and defines their federal employment status for specified federal benefits.

16 USC 559d Authorizes the USFS to cooperate with all other federal, state, and local law enforcement officials.

16 USC 563 Authorizes the USFS to enter into cooperative agreements with state and private forest owners for fire protection for forest lands in navigable river watersheds.

16 USC 565a-1 Authorizes the USFS to enter into cooperative agreements with just about anyone for most USFS programs needs.

16 USC 567a & 567b Authorizes USFS to aid state forests and enter into cooperative agreements.

16 USC 571c Authorizes USFS to enter into long-term leases and to make permanent improvements on such leased lands.

16 USC 572 Authorizes USFS to enter into cooperative agreements with the neighbors of national forests.

16 USC 579a Authorizes the USFS to procure and operate aerial services and facilities.

16 USC 580 & 580a Authorizes the USFS to rent fire control equipment to other entities and to enter into cooperative agreements to sell fire control supplies, equipment, and materials to other entities.

16 USC 580d Authorizes the USFS to permit others to use their facilities for up to 30 years per permit.

16 USC 580m and 580n States a preference for the development of Corps of Engineers civil works reservoirs into productive forestry lands, and authorizes cooperation with Dept. of Agriculture and state conservation agencies.

16 USC 582a-1 Authorizes the UFS to cooperate with states and state schools in forestry research.
16 USC 582-8 authorizes grants for this purpose.

16 USC 583a & 583c Authorize the Dept. of Agriculture and the Dept. of Interior to enter into cooperative agreements with any other forest owner and any other federal entity for sustained-yield forest development.

16 USC 583j-1 ff. Authorizes the US Forest Service Foundation.

16 USC 1600 ff. FOREST & RANGELAND RENEWABLE RESOURCES PLANNING
1643 interagency cooperation authorized

SPECIAL FOREST SERVICE AREAS IN PORTLAND DISTRICT

16 USC 541 ff. Cascade Head Scenic Research Area in Siuslaw Natl. Forest (North of Lincoln City)

16 USC 544 ff. Columbia Gorge National Scenic Area (Columbia River COE projects)

16 USC 2101 ff. Cooperative Forestry Assistance
2105(f) CHALLENGE COST SHARE PROGRAMS

NATURAL RESOURCES CONSERVATION SERVICE (SOIL CONSERVATION SERVICE)

16 USC 590a, 590b, 590c, 590d, and 590e Authorize SCS (NRCS) to enter into cooperative agreements with anyone for soil conservation purposes.

16 USC 590g includes navigable waters and rivers and harbors within purposes of SCS/NCRS program.

16 USC 590q-1 Authorizes SCS/NCRS to sell materials and supplies to other government agencies.

16 USC 1003 ff. WATERSHED IMPROVEMENT: federal agencies to cooperate with each other and with states;
1006 authorizes multiple federal and state agency cooperative agreements

16 USC 1301 ff. WETLANDS PRESERVATION
1309 cooperation with others

16 USC 2001 ff. SOIL & WATER RESOURCES CONSERVATION PROGRAMS
2003 state cooperative agreements

16 USC 3801 ff. ERODABLE LAND & WETLAND CONSERVATION & RESERVE PROGRAM

COMMERCE DEPARTMENT

16 USC 18-18b PROMOTION OF TOURIST TRAVEL

16 USC 1451ff. COASTAL ZONE MANAGEMENT (CZM) ACT:
1456 federal consistency requirements with states

NATIONAL OCEANOGRAPHIC AND ATMOSPHERIC ADMINISTRATION /
NATIONAL MARINE FISHERIES SERVICE

MITCHELL ACT 16 USC 755-757, Columbia River Salmon Mitigation program authorized
Including fish hatcheries in Columbia River Basin; authorization to conduct studies and research on
conservation and fish issues, to perform all activities necessary to conserve Columbia River Basin fish, and
to enter into cooperative agreements with the states to use their facilities and to improve their facilities.
16 USC 757c allows the program to be carried out on the lands of other federal agencies.

16 USC 758 ff expands and grants authority for ocean fisheries as well.

16 USC 773d Cooperation with North Pacific Halibut Commission authorized.

[16 USC 778 ff. –see USFWS]

16 USC 916h Authorizes federal agencies to assist in Whaling Convention work

16 USC 1361 ff. MARINE MAMMAL PROTECTION ACT
1379 & 1382 cooperative agreements authorized

16 USC 1434(d) MARINE SANCTUARIES
Interagency cooperation authorized

16 USC 1801 ff. Fishery Conservation & Management (Oceans); fish councils; etc.

16 USC 3301 ff. SALMON & STEELHEAD CONSERVATION & ENHANCEMENT:
BOTH NMFS & USFWS authorities

16 USC 3631 ff. PACIFIC SALMON FISHING
3634 INTERAGENCY COOPERATION

16 USC 4101 ff. Interjurisdictional Fisheries

ENERGY DEPARTMENT

BONNEVILLE POWER ADMINISTRATION (BPA)

16 USC 832 ff. Bonneville Project Act: authorizes & requires Corps –Bonneville cooperation

16 USC 837 & 838 ff. More BPA authorities on power transmission

16 USC 839 ff PACIFIC NW POWER PLANNING & COORDINATION ACT
creates Power Planning Council to coordinate power & fish planning on Columbia River Basin and to
guide BPA, Corps, and BuRec power & fish protection activities

4 SPECIAL STATUTES FURTHER DEFINE/AUTHORIZED COE BPA RELATIONSHIPS:

16 USC 832m(d) Authorizes BPA to procure for Corps (Sec. 508)

16 USC 838f BPA markets Corps and BuRec hydropower.

16 USC 839d-1 (Sec. 2406) BPA can fund Corps hydropower maintenance.

33 USC 2286 (Sec. 1146) BPA (or anyone) can fund fish & wildlife improvements on Corps projects under Northwest Power Planning Act.

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

16 USC 791 ff. FEDERAL POWER ACT: authorizes & requires Corps -FERC cooperation

ENVIRONMENTAL PROTECTION AGENCY (EPA)

33 USC & 42 USC generally for various environmental protection acts:

33 USC 1251 ff. Water pollution
33 USC 1401 ff. Ocean dumping
42 USC 4901 ff. Noise pollution
42 USC 7401 ff. Air pollution
42 USC 9601 ff. CERCLA (Superfund)

INTERIOR DEPARTMENT

GENERAL

16 USC 17k-17L. INTERGOVERNMENTAL COOPERATION ON RECREATION

16 USC 18f. Management of Museum properties

16 USC 18g-18j. Volunteer Programs

16 USC 1221 ff. ESTUARY PROTECTION: federal agency cooperation with states authorized.

16 USC 1241 ff. NATIONAL TRAILS SYSTEM: federal agency cooperation authorized.

16 USC 1271 ff. WILD & SCENIC RIVERS ACT:

1281 cooperative agreements with states authorized

1282 assistance to others authorized, etc.

1274 component rivers: OREGON & Portland District LIST (most in nation):

(5) Rogue, Ore	(12) Snake, Idaho & Oregon
(54) Illinois, Ore	(55) Owyhee, Ore
(61) White Salmon, Wa	(68) Big Marsh Creek, Ore
(69) Chetco, Ore	(70) Clackamas, Ore
(71) Crescent Creek, Ore	(72) Crooked River, Ore
(73) Deschutes, Ore	(74) Donner und Blitzen, Ore
(75) Eagle Creek, Ore	(76) Elk, Ore
(77) Grande Rhonde, Ore	(78) Imnaha, Ore
(79) John Day, Ore	(80) Joseph Creek, Ore
(81) Little Deschutes, Ore	(82) Lostine, Ore
(83) Malheur, Ore	(84) McKenzie, Ore
(85) Metolius, Ore	(86) Minam, Ore
(87) N.Fork, Crooked, Ore	(88) N Fork, John Day, Ore
(89) N Fork, Malheur, Ore	(90) N Fork of Middle Fork, Willamette, Ore
(91) N Fork, Owyhee, Ore	(92) N Fork, Smith, Ore

- | | |
|--|---|
| (93) N Fork, Sprague, Ore | (94) North Powder, Ore |
| (95) North Umpqua, Ore | (96) Powder, Ore |
| (97) Quartzville Creek, Ore | (98) Roaring River, Ore |
| (99) Salmon River, Ore | (100) Sandy River, Ore |
| (101) S Fork, John Day, Ore | (102) Squaw Creek, Ore (3 Sisters area) |
| (103) Sycan, Ore | (104) Upper Rogue, Ore |
| (105) Wenaha, Ore | (106) West Little Owyhee, Ore |
| (107) White, Ore; | |
| Smith River, Cal; | |
| N. fork, Smith River, Cal. (Oregon-California state line area) | |

1276 Potential additions to Wild & Scenic Rivers list (also regulated):

- | | |
|---|----------------------------|
| (9) Illinois, Ore | (46) S Fork, Owyhee, Ore |
| (57) Snake River, Ore, Wash. & Id. | (90) North Umpqua, Ore |
| (94) Klickitat, Wa (Yakama Indian Nation coordination required) | |
| (95) White Salmon, Wa | (100) Blue River, Ore |
| (101) Chewaucan, Ore | (102) N Fork, Malheur, Ore |
| (103) S Fork, McKenzie, Ore | (104) Steamboat Creek, Ore |
| (105) Wallowa, Ore | |

1276(d) (2) special regulation: UPPER KLAMATH from John Boyle Dam to Ore-Cal. border

THERE ISN'T AN UNREGULATED RIVER IN OREGON ! This list does NOT include State of Oregon's own additional list of state wild and scenic river segments. Nor does it include other classes of regulation (National Scenic Area on Columbia; Hells Canyon on Snake; various coastal protected areas; various Fish & Wildlife Refuge areas on various rivers; tribal reservation waters; state Willamette Greenway; etc.)

16 USC 1501 RURAL ENVIRONMENTAL CONSERVATION

1508 cooperative arrangements & coordination with other agencies

16 USC 4601 ff. Take pride in America

4604 Volunteers

4605 Cooperative Agreements

42 USC 1962-19 DOI AUTHORITY FOR COOPERATIVE AGREEMENTS WITH STATE & LOCAL GOVERNMENTS ON WATER RESOURCES

43 USC 1331 ff. OUTER CONTINENTAL SHELF LANDS ACT

BUREAU OF INDIAN AFFAIRS (BIA)

25 USC 450e (b) SELF DETERMINATION ACT PROVISIONS on training, employment, and subcontracting; applicable to all Native American programs

25 usc 3001 ff. NATIVE AMERICAN GRAVES PROTECTION & REPATRIATION ACT (NAGPRA)

PRESIDENT CLINTON EXECUTIVE MEMORANDA OF APRIL 29, 1994, 59 Federal Register 22951: Mandated Sovereign to Sovereign communications for all federal agencies; encouraged cooperative agreements with tribes by federal agencies.

BUREAU OF LAND MANAGEMENT (BLM)

16 USC 1336 authorizes cooperative agreements on wild horses & burros

43 USC 1 ff. BLM generally

BUREAU OF RECLAMATION (BOR)

16 USC 590y, 590z, 590z-1, 590z-4 Authorize BOR to coordinate with the Corps of Engineers and to enter into cooperative agreements with any entity deemed appropriate.

16 USC 590z-7 Authorizes BOR to sell water to others (basic water supply statute).

16 USC 835 ff. COLUMBIA BASIN PROJECT

835i is authority for state fish hatchery cooperative agreements (Ringold hatchery)

43 USC 371 ff. BOR generally

CORPS -BOR RELATIONSHIPS:

43 USC 390, 390b, 390c, 390d, 390LL

OREGON BOR PROJECTS:

Klamath (Project)	43 USC 601 ff	Tualatin	43 USC 616nn
Crooked River	43 USC 615 ff	Merlin Div, Rogue R	43 USC 616mmmm
Dalles	43 USC 615v	Touchet Div, Walla Walla R	43 USC 616tttt
McKay Dam, Umatilla	43 USC 616ww		

GEOLOGIC SURVEY

43 USC 31 ff. (general authorities)

NATIONAL PARK SERVICE

16 USC 8a-8d National Park Approach Roads authorities; cooperative agreements

16 USC 16 National Park Service warehouses (service other agencies)

16 USC 19e-19n National Park Foundation

NATIONAL PARKS, MONUMENTS, ETC. NEAR PORTLAND DISTRICT PROJECTS:
(This is only partial list of what's in Oregon; different agencies operate these)

1. Crater Lake National Park, 16 USC 121 (NPS)
2. Coos County, Oregon 16 USC 405
3. Klamath R. Conservation Area 16 USC 460ss-3
4. Fort Vancouver Natl. Mon. 16 USC 450ff (NPS)
5. Fort Clatsop Natl. Mon. 16 USC 450mm (NPS)

6. Oregon Dunes Natl. Rec. Area 16 USC 460z
7. Ore. Cascades Rec. Area 16 USC 460oo (USFS)
8. Columbia Gorge Natl. Scenic Area 16 USC 544 (US FS)
9. Hells Canyon Natl. Rec. Area 16 USC 460gg (Ore-Id. Border)
10. Mt. St. Helens Volcanic Mon. 16 USC 531 note; PL 97-243, Aug. 26, 1982, 96 Stat. 301
11. John Day Fossil Beds Natl. Mon. 16 USC 531 note; PL 92-486, title I, Sec. 101(a)(2), Oct 26, 1974, 88 Stat. 1461
12. Newberry Natl Mon. 16 USC 531 note; PL 101-522, Nov. 5, 1990, 104 Stat. 2288

US FISH & WILDLIFE SERVICE

16 USC 661 Authorizes USFWS to enter into cooperative agreements with anyone for wildlife protection.

[16 USC 662 Fish & Wildlife Coordination Act – see above.]

16 USC 663, 664, 667b Provide additional authorities for cooperative agreements and land exchanges for fish and wildlife conservation among federal and non-federal entities.

16 USC 3501 ff. COASTAL BARRIERS
3504 federal limitations

16 USC 3701 ff. NATIONAL FISH & WILDLIFE FOUNDATION

NATIONAL WILDLIFE REFUGE SYSTEM: 16 USC 668dd ff.

16 USC 669 Authorizes cooperative agreements between USFWS and state agencies for wildlife restoration projects.

16 USC 670g-670o Authorizes Interior & Agriculture & Energy Dept (former AEC) & NASA to enter into agreements with each other and cooperative agreements with state and local officials for conservation, hunting, fishing, etc. on their lands.

GAME & BIRD PRESERVES: 16 USC 671ff. Authorizes game preserves and cooperative agreements with States.

16 USC 695 ff. California authorities, including Central Valley Project; Corps civil works program is designated participant.

MIGRATORY WATERFOWL; INTERNATIONAL TREATIES

16 USC 701 ff. provides for International Treaties compliance and compliance on other migratory bird provisions.

US FISH & WILDLIFE SERVICE: ORGANIC STATUTE: 16 USC 741 ff.

DINGELL JOHNSON SPORTS FISH RESTORATION ACT: 16 USC 777 FF: authorizes USFWS to enter into cooperative agreements with States for fish conservation; funds State hatcheries.

16 USC 778 ff. Authorizes both Interior & Commerce to conduct fisheries' research & to operate fish facilities; authorizes agreements with Dept. of Agriculture.

LABOR DEPARTMENT

16 USC 1701 ff. YOUTH CONSERVATION CORPS
1703(c) contract authority with others

TRANSPORTATION DEPARTMENT

US COAST GUARD (USCG)
33 USC and 46 USC

APPENDIX N

Project 5-Year Plan Example

1. Introduction and Background (Include project data here, e.g., acreage, Tribal lands or ceded lands, Cooperating Group participation, etc.)
 - a. Project Location Map
2. Status of Inventory, Evaluation, and Treatment (Include number and types of sites recorded in project area; number formally determined eligible for the National Register; sites subjected to treatment or data recovery)
3. Project Effects on Resources
4. Potential for Losses (e.g. list most vulnerable sites)
5. Proposed Program
 - a. Goals (list major management and compliance goals for project)
 - b. Specific Tasks
 - i. Identification of TCPs
 - ii. Evaluation of TCPs
 - iii. Identification of Archeological and Historic Sites
 - iv. Evaluation of Archeological and Historic Sites
 - v. Treatment of TCPs, Archeological and Historic Sites
 - vi. Monitoring
 - vii. Public Education
 - viii. Inadvertent Discoveries
 - ix. Curation
6. Proposed Schedule
 - a. Cyclical Constraints (fieldwork season, project operations constraints, etc.)
 - b. Schedule of Priorities
 - i. Work Currently in Progress
 - ii. New Activities (current fiscal year)
 - iii. Out-year Activities (items not likely to be funded during current FY)
7. Funding (proposed costs for Specific Tasks listed in 5.b.)
 - a. Table showing proposed costs for all Tasks for 5 Year period
 - b. Table showing specific spending plan for current year
8. Plan Preparation and Coordination (include Cooperating Group members responsible for preparation of plan and list those entities or agencies included in coordination of plan)
9. References and Attachments (e.g. Cooperating Group Members, Operating Guidelines, etc.)

**APPENDIX O
EXAMPLE**

FY 06 FCRPS Annual Plan

Co-Op Group: Wana Pa Koot Koot - Portland District

Priority	Activity/Project	Cost	Description	New/Continued Proj	Completion FY	Comments
1	John Day Inventory		Complete field work and prepare report documenting the inventories carried out in 04 and 05.	Continued project	FY 06	
1	HMP for Bonneville		Provides the final report for the work completed in FY 05	Continued project	FY 06	
1	Monitor Cultural Resource sites on three Project lands		Funds cultural resource protection monitoring on the 3 Portland District projects.	Continued project	FY 06	
1	Oral History/Traditional Cultural Property Assessment Nez Perce		Continues the Nez Perce oral history and traditional cultural properties assessment.	Continued project	FY 06	
1	CRITFE Law Enforcement		Provides Col. River Intertribal Law Enforcement with an FTE for Boat Patrols along Col. R. Project Shorelines. CRITFE has enforcement and arrest powers to take cultural resouce vandals into custody.	Continued project	FY 06	
2	Education and outreach		Divided between the Yakama and Umatilla. Yakama Public out reach; Umatillia Training for law enforcement entities.	Continued project	FY 06	
1	Assessment of Archaeological Site Vandalism		Document Vandalism in support of Archeological Resource Protection Cases.	New	FY 06	
1	National Register Evaluation		Supports testing of archaeological sites to determine their National Register significance.			
1	Restoration of archaeological sites that have been vandalized or eroded		Provides for contract services and materials to restore archaeological sites.Work programmed for FY 06; may be a continuing feature.	Continued project	FY 06	
1	Restoration Planning		Funds Planning to restore archaeological sites, develop site lists and scopes for planning activities. Some planning occurred in FY 05 but not carried through because of time and funding limitations.	Continued project	FY 06	
1	Curation agreement with repositories		Funds curation agreements with various repositories holding Federal Collections.		FY 06	
1	Meeting Note taker		Note taker for Wanna Pa Pa Koot meetings	Continued project	FY 06	
1	Subtotal Corps Admin					
	TOTAL FY06					
1	Tribal Participation		BPA direct funding for tribal participation	Continued project	FY 06	

APPENDIX P

EXAMPLE

OPERATING GUIDELINES FOR FCRPS CULTURAL RESOURCE COOPERATING GROUPS

Purpose:

The Cooperating Group [CG] is to serve as a regular forum in support of intergovernmental communications between interested federal, state, tribal, and local governments for the purpose of exchanging views, technical information, and planning advice relating to the management and implementation of the FCRPS cultural resources program of the [Army Corps of Engineers or Bureau of Reclamation] and the Bonneville Power Administration under section 106 of the National Historic Preservation Act.

Scope:

The [Corps or Reclamation] retains all of its authority and discretion as the federal land manager to make decisions regarding implementation of activities to meet NHPA. The individual participants in the CG may provide advice and suggestions as to planning and management priorities in relation the agency's implementation of the section 106 process under the NHPA as it relates to FCRPS operations. This may include assistance to the federal land managing agency as that agency determines the area of potential effect, identifies historic and cultural properties, assesses the effects of FCRPS operations on the properties, and determines the appropriate treatment, budget and timing of implementation. Determinations as to contracting matters are generally not within the scope of the CG.

Participants:

In addition to the chartering agencies (the Corps or the Bureau, and BPA), invited participants are limited to federal officials and elected officers of State, local, and tribal governments acting in their official capacities, or their designated employees with authority to act in their behalf.

The following governmental entities and their employee representatives are specifically invited to participate:

Federal: [list]

State: State Historic Preservation Officer

Tribal: [list tribes]

Local:

Note taker

Other federal, state, tribal, or local government representatives may seek participation by contacting the chartering agencies.

Non-employee contractors or other individuals assisting a participating government may attend provided they attend with a government employee. If a participant seeks to send a non-employee representative to an CG meeting in lieu of an employee, the participant must provide the Chair/Project Manager with a written authorization for the non-employee to attend, which confirms the non-employee has been designated to attend, has authority to act on behalf of the participant, and lists any limitations in the scope of that authority. Unless such written authorization indicates a lesser period, the duration of the authority will be no more than one year from the date of the authorization.

Individuals who are not government employees, or who do not have written authorization to attend per the above, are not authorized to participate in the CG. Other opportunities for involvement in the section 106 process for FCRPS operations will be provided. The Chartering Agencies may invite individuals to attend to provide information or other presentations, but such individuals would not be participants in the group.

Chair/Project Manager:

The chartering agencies serve as the coordinator for the Cooperating Groups, and will designate a contact person to serve as Project Manager or Chair. If a Chair is designated by the group who is not a chartering agency representative, then the agency Project Manager will work with the Chair to accomplish CG meeting tasks.

Meetings:

Meetings will be held at least 4 times per year, at locations to be determined. Notice of the meetings will be provided by the Chair/Project Manager through e-mail notice to the identified representatives of the invited participants. Meeting notes will be taken at every meeting and will be distributed to participants for comment prior to the next scheduled meeting.

Funding:

Participation in the Reservoir Cooperating Group is voluntary, and participants are generally expected to pay their own way. Limited funding in support of tribal government participation (travel costs) may be available through BPA. If participation is not fiscally feasible for any participant, alternative means of becoming informed and providing review and comment to the Corps/Reclamation and BPA regarding section 106 NHPA planning will be offered.

Agendas:

The Coordinator will circulate the agenda for the meetings in the e-mail notice of the meeting. Additional agenda items may be suggested, but the chartering agencies make the final determination as to agenda items.

Meetings Rules:

The Chair/Project Manager will run the meeting. Consensus recommendations from the Group to the chartering agencies on any agenda item are encouraged, but not required. Discussions are encouraged to be open and candid, however, all participants are expected to participate in good faith, with mutual respect for all participants. The chartering agencies reserve the right to exclude any participant representative who is disruptive or disrespectful.

Confidentiality:

The chartering federal agencies will seek to protect any sensitive information from public disclosure pursuant to federal laws. Participants considering discussing confidential information should alert the Chair/Project Manager first who may recommend deferral or a separate consultation outside the Cooperating Group meeting.

Dispute Resolution

If a participating member government has a dispute with the Chartering Agencies concerning the need, extent, appropriateness, priority or funding of historic property management actions, the disputing member government and the Chartering Agencies shall use their best efforts to resolve the dispute in an informal fashion through consultation and communication or other forms of mutually acceptable non-binding alternative dispute resolution. If disputes cannot be resolved informally, then they shall be elevated to appropriate levels within each agency or Tribe for resolution.

Termination:

Membership in a Cooperating Group may be terminated by the chartering agencies or participating organization at any time, with 30 days written notice

APPENDIX Q-1

ACTIVITIES INCLUDED IN FCRPS CULTURAL RESOURCE MANAGEMENT PROGRAM

The program is designed to address the effects of project operations on historic properties within the APE. The following list shows what kinds of historic properties management activities are normally funded under this program. Any activity that may require a disproportionate amount of annual funding will be taken to the Co-Chairs of the Cultural Resources Subcommittee for discussion, then to the appropriate agency Joint Operating Committee for decision on funding source.

Class of Management Action and Compliance Function	Activities
1. Historic Property and Archaeological Site Management	Agency support including, but not limited to, contract development and management, site protection plans, historic property management plans, project master plans and operation management plans, FCRPS CRM program guidance and technical support for JOC/CR Subcommittee, technical and administrative records and report management, GIS input and maintenance, special law enforcement, recreation management
Develop context for determining National Register eligibility	<p>Archaeological, historical, environmental and ethnographic documentary and archival research on region and locality, including study of curated collections.</p> <p>Determine actual real estate boundaries at sites and acquire access or rights to support CRM work.</p> <p>Develop preliminary GIS layer (and ground-truth, update and maintain through all subsequent phases.</p>
Carry out field inventory of properties	Inventory, survey or reconnaissance contracts. Can include mapping and aerial photography.
Evaluate National Register eligibility and determine project effect	Evaluation contracts (test excavations; remote sensing; historic documentation, oral history; study and write-up of curated collections)
Develop and apply treatment to preserve characteristics that make properties eligible	<p>Stabilize and control erosion at archaeological sites, including geological and engineering investigations.</p> <p>Recover archaeological data by</p>

	<p>excavation and document and publish results. Record historic structures with HABS/HAER procedures.</p> <p>Restore, stabilize or adapt historic structures for re-use.</p> <p>Support law enforcement to prevent or respond to vandalism (ARPA , Title 36).</p> <p>Curate collections, including engineering and architectural support for facility conversions, collections stabilization and upgrading and annual funding of maintenance contracts. Study and report on curated collections from key archaeological sites affected by projects.</p> <p>Develop and maintain interpretive exhibits (online, visitor centers, schools, museums, traveling exhibits) and educational programs.</p>
2. Traditional Cultural Property Management	See activities in No. 1 above
Develop context for determining National Register Eligibility	<p>Conduct general ethnohistoric and ethnographic research on particular tribes, traditional groups or communities.</p> <p>Develop preliminary GIS layer (and ground-truth, update and maintain through all subsequent phases).</p>
Carry out field inventory of properties	TCP survey using: ethnographic archival investigations; oral histories with informant site visits
Evaluate National Register eligibility and determine project effect	TCP survey contracts, including directed interviews with Elders.
Develop and apply treatment to preserve characteristics that make properties eligible	<p>Protect, relocate, or repatriate threatened rock art</p> <p>Preserve information on archival media and curate collections.</p> <p>Input to regional TCP trail preservation initiatives.</p> <p>Develop and maintain interpretive exhibits (on-line, visitor centers, schools, museums, traveling exhibits) and educational programs.</p>

	Incorporate appropriate protections into agency land management policies, procedures and documents.
3. Inadvertent Discoveries	Recovery, analysis and reporting of inadvertent discoveries under 36CFR800.13 and initial determinations under NAGPRA, Section 3, that are the result of project operations and maintenance.

APPENDIX Q-2

TYPES OF ACTIVITIES NOT INCLUDED IN FCRPS CULTURAL RESOURCE MANAGEMENT PROGRAM

The following list identifies activities that normally would not be funded under the FCRPS Historic Properties Management Program. Exceptions to any of the excluded activities may be required. Exceptions may be taken to the Co-Chairs of the Cultural Resources Subcommittee then to the appropriate agency Joint Operating Committee for resolution. The following activities are normally **Not** included in this Program:

- new construction requiring special administrative or legislative approval (Construction General and large capital projects)
- real estate actions such as maintenance of historic dams, surveys for outgrants and licenses, land acquisitions and excessions
- Native American Graves Protection and Repatriation Act summaries, inventories and repatriation under Sections 5, 6, and 7 of NAGPRA
- cemetery relocations, maintenance and establishment
- Corps Section 10/404 Regulatory Permits
- Archeological Resources Protection Act Permits. (Other ARPA related activities, e.g., patrolling, monitoring, damage assessments, may be reviewed on a case by case basis for appropriate funding source.)
- recreation activities, e.g., construction and maintenance of fences, signs, docks, trails, roads, beaches, restrooms, and landscaping.
- navigation (non-joint activities)

Appendix R

Monthly Budget Reporting Format

Reclamation/BPA
Corps of Engineers

APPENDIX R

FCRPS CRM BUDGET FOR FY05
(Reclamation/BPA)

Date

FY05 Program

	FY05 Budget	Obligated	Invoiced	Expended as of 5/31/05	Remaining	% contract spent
Grand Coulee						
CCT (#1328)						
CCT (#22207)						
STI (#1157)						
AAR (#6388-44)						
NPS Participation/Travel (Placeholder)						
HPMP Editor (8772-00009)						
Hungry Horse						
FNF (#16833)						
CSKT (#1219)						
Overview (Placeholder)						
HPMP Editor (8772-00008)						
FCRPS Wide (WO 155978)						
GIS (TO 06)						
Conference (TO 03)						
Report Review (TO 05)						
Elder Honoring (TO 04)						
GIS Training (TO 08)						
TOTAL						
BPA Share						
Reclamation Share						

Note: Signature of the Annual Interagency Agreement between BPA and Reclamation authorizes the FY05 Budget.
If modified, the amount cannot exceed the program ceiling.

- CCT - Colville Confederated Tribes
- STI - Spokane Tribe of Indians
- AAR - Applied Archaeological Research
- FNF - Flathead National Forest
- CSKT - Confederated Salish and Kootenai Tribes
- NPS - National Park Service
- HPMP - Historic Property Mgmt Plan

APPENDIX R

Corps of Engineers

**FCRPS Cultural Resources Budget
Monthly Report**

FY:

District:

Co-Op Group:

Date:

Projects	Budgeted	Obligated	Actual Expended	Available	Comments
<i>Management Plan</i>					
Contract No./Description					
<i>Inventory</i>					
Contract No./Description					
<i>Evaluation</i>					
Contract No./Description					
<i>Treatment</i>					
Contract No./Description					
<i>Law Enforcement</i>					
Contract No./Description					
<i>TCP/Oral History</i>					
Contract No./Description					
<i>Curation</i>					
Contract No./Description					
<i>Other</i>					
Contract No./Description					
<i>Corps Admin.</i>					
TOTAL					
FY 0X Carry-In					
Tribal Participation					

APPENDIX S

REPORT OUT BY COOPERATING GROUP BY RESERVOIR FCRPS Conference Report

- Group make-up and structure
- Inventory – (archaeological; TCP covered in separate topic category)
 - Percent completed
 - Adequate
 - Number of sites
- Historic Properties Management Plan (HPMP)
 - In place
 - Updated
 - Copies to Federal Agencies, SHPO, THPO, ACHP
- Evaluation
 - Techniques (Shovel Test Probes, controlled excavation, ethnohistory, etc...)
 - Boundaries defined
 - Percent of sites evaluated
 - Number - Formally determined Eligible/ Formally determined not eligible/ No eligibility determination made
 - DOEs (list site numbers)
 - Districts
- Traditional Cultural Properties (TCP)
 - Process for location
 - Recording Process
 - Boundaries Determined
 - Place Names
 - Utilized to support archaeological data
 - DOEs
- Monitoring
 - Monitoring Plans in Place
 - Techniques
 - Utilize GIS
- Treatment
 - Projects completed
 - Techniques
 - Success/Failure
 - Have treated sites been determined eligible for NRHP?

APPENDIX T

RECORDS MANAGEMENT REQUIREMENTS

Each agency will identify one “central file” location in which it will maintain a complete administrative record of FCRPS Cultural Resources Program management and accomplishment records. Each agency will name an individual who is responsible for maintaining the central file at its location. BPA will have a copy of all records, and Reclamation and the USACE will each have a copy of records pertinent to their respective management areas.

The Cultural Resources Subcommittee will complete the compilation of a bibliography of FCRPS final products within two years of finalization of this handbook. The listing will be maintained by an individual, with others reporting new information no less than annually. The responsible individual will rotate through the technical group annually.

The Cultural Resource Subcommittee will identify the kinds of records that should be sent to the central file. These will include all agreement documents that shape program implementation at a reservoir, including those written prior to FCRPS but still in effect; Section 106 consultative records for FCRPS program implementation actions; FCRPS contracts, both expired and in effect; reservoir HPMPs, five-year action plans, and annual work plans; letters or memoranda that shape implementation policy for a reservoir or the program; a copy of Cooperating Group meeting notes; the bibliography; and other records that document larger program accomplishment.

The Cultural Resources Subcommittee will assemble a complete administrative file of past records, and a listing of the documents will be created within two years of finalization of this handbook. A copy of each document, as appropriate to jurisdiction, will be distributed to each of the central file locations with the listing.

When any office generates an item that should be in the administrative record, it will copy it to the appropriate central file locations. It will also provide hard copy and a CD copy of each final report. Each central file will be responsible for updating its file list.

Appendix U
FCRPS Cultural Resource Program Schedule

Activity	Responsible Party	Timing	Notes
Five-Year Action Plan	Co-Op Group	Update annually, preferably in March	
Annual Work Plan	Co-Op Group	Update annually, preferably in March	
JOC Meetings	CRSC Co-Chairs	Attend every 6 weeks	
CRSC Meetings	CRSC Members	Quarterly, preferably in Nov., Feb., May, Aug.	
Co-Op Group Meetings	Co-Op Group	Determined by each group but no less frequently than quarterly	
Annual Funding Request - Corps	Co-Op Group and Project Mgr.	Submit to CRSC Co-Chair on April 1st annually	Corps CRSC Co-Chair will notify Co-op groups of JOC approved amounts by Sept. 30th
Annual Funding Request - Reclamation	Co-Op Group and Project Mgr.	Submit to CRSC Co-Chairs on June 15 th annually	Reclamation CRSC Co-Chair will notify Co-op groups of approved amounts by July 15th
Annual Program Report	CRSC	March 15 th annually	Annual summary of program compliance progress
Annual FCRPS Conference	BPA and CRSC	March, annually	
Monthly Co-Op Group Budget Report	Corps Project Mgrs.	Submitted monthly to Corps CRSC Co-Chair	Similar report prepared by BPA Project Mgrs. For Reclamation Projects
Contract Status Reports	Contracting agency	Provided at each Co-op group meeting	
Draft & Final Technical Reports	Contracting Agency	Distributed to members of appropriate Co-op group according to individual contract schedules/requirements	
Performance Indicators	CRSC	Developed in August annually for next fiscal year	
Scopes of Work	Project Manager and Co-op Group	Developed during Aug.-Sept. for next fiscal year	