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From: Sally [mailto:sbird@wstribes.org]

Sent: Monday, June 23, 2008 3:22 PM

To: Martine,Kristen D - KEC-4; St Hilaire,Kimberly R - KEC-4; 'Celmer, Gail C
NWD'

Subject: FCRPS Comments

Kimberly,

I know I'm late so I thought I should submit our comments as they are in track change mode. Attached are Warm Springs comments; both the legal staff and the CR staff has reviewed and provided comments - they should show up either under the document or off to the side - SB is Sally Bird; LL is Laurie Lester's comments (legal council for the Tribes).

Also, in fade or light gray are suggested text changes.

Thank you for your patience; the document looks so much better and I do appreciate everyone's time and commitment to this.

Sally

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**SYSTEMWIDE PROGRAMMATIC AGREEMENT
FOR THE MANAGEMENT OF HISTORIC PROPERTIES
AFFECTED BY
THE MULTIPURPOSE OPERATIONS OF FOURTEEN PROJECTS OF THE
FEDERAL COLUMBIA RIVER POWER SYSTEM
FOR COMPLIANCE WITH
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT**

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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 the 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 these 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 (part of 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 implementation of these Project purposes comprise an the “undertaking” for the purposes of Section 106 of the National Historic Preservation Act (NHPA), (16 U.S.C. § 470f.) for this agreement (“Systemwide PA”); (see Attachment 5 for additional details regarding Project purposes and the scope of the undertaking); and,

WHEREAS, the undertaking has caused, is causing, and shall cause in the future direct, indirect, and cumulative 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 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), which remain in effect; 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. Also, because this PA addresses Section 106 NHPA compliance activities, compliance activities pursuant to other Federal statutes shall continue to be addressed separately commensurate with agency responsibilities and consistent with agency 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 undertaking affects historic properties of traditional religious and cultural importance to Indian tribes, and thus the Lead Federal Agencies, consistent with the NHPA and its implementing regulations, shall consult with such tribes; in addition, BPA and the Corps, consistent with their respective tribal policies (http://www.bpa.gov/corporate/About_BPA/Tribes/Trblpolicy.pdf and <http://www.usace.army.mil/cw/tribal/index.html>), and Reclamation, consistent with its internal program processes, shall all seek to engage with affected tribes early in relevant processes to identify tribal concerns; 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 Reservation, the Nez Perce Tribe, the Spokane Tribe of Indians, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation, and the Confederated Tribes of the Umatilla Indian Reservation; 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 Reservation, the Confederated Salish & Kootenai Tribes of the Flathead Reservation, 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 of Indians, the Kootenai Tribe of Idaho, the Nez Perce Tribe, and the Spokane Tribe of Indians, on the development of this Systemwide PA and have offered these entities the opportunity to become a signatory party to the extent of their jurisdiction; 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," as well as executive orders and treaties between the United States and tribes, the Lead Federal Agencies have established Government-to-Government relationships with the above named Federally recognized tribes; and,

WHEREAS, the Lead Federal Agencies have notified and provided an opportunity for members of the public to participate by commenting on the drafts of this Systemwide PA; and,

WHEREAS, the Lead Federal Agencies recognize the importance of historic properties to affected tribes, SHPOs, THPOs, and the public, and value the past and current participation of these entities in the on-going management of the FCRPS historic property program.

NOW, THEREFORE, pursuant to 36 C.F.R. § 800.14(b), the Lead Federal Agencies shall consider the effects of the undertaking on historic properties in accordance with the following stipulations, and 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 shall together implement the systemwide actions pursuant to this Systemwide PA. Project-specific actions shall 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 (see Attachment 5).

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 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 shall 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, shall remain the responsibility of the individual Federal agencies to address as appropriate to their authority and jurisdiction.
- C. Provide a systemwide framework for compliance with Section 106. The Lead Federal Agencies intend the Systemwide PA to serve as the overarching or umbrella agreement applicable to all Projects. The Lead Federal Agencies shall then develop Project-specific measures to address implementation of this Systemwide PA for Section 106 compliance activities at each Project. See Stipulation VI.
- D. Provide for streamlining of the Section 106 review process through exempting certain kinds of routine actions that have limited or no potential to affect historic properties, or by setting up other Project-specific coordination procedures that expedite the Section 106 review process. Attachment 6 is a list of routine actions that have little or no potential to affect historic properties and are hereby excluded from further consultation. The Lead Federal Agencies, in consultation with parties appropriate to that Project, shall identify exemptions

and other Project-specific coordination procedures to expedite the Section 106 review process in either Project-specific PAs or HPMPs.

- E. The undertaking for this Systemwide PA is broad, such that most activities relating to operation and maintenance of the FCRPS fall within its scope. A Lead Agency or Agencies can, however, elect not to utilize the terms of this PA for an activity that would otherwise come within the scope of the PA, and instead treat that activity as a separate undertaking subject to the standard Section 106 regulatory procedures of 36 C.F.R. part 800. If the Lead Federal Agency or Agencies is/are considering not utilizing this Systemwide PA for a specific activity or class of activities, the Agency or Agencies shall discuss the option with the relevant Project-specific Cooperating Group(s) and give notice to the affected tribes, SHPO/THPOs, and any affected land managing agencies, and shall consider their views before making a decision. Additional processes for determining when it may be appropriate not to use this Systemwide PA may be developed in a Project-specific PA and/or HPMP.

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 consulting parties (as defined in Attachment 3 of this PA) to a Project in accordance with Stipulation IX:
1. Define the Area of Potential Effects (APE) in accordance with Stipulation III;
 2. Identify and evaluate each potentially affected property to assess eligibility to the National Register. All types of properties, including those of religious and cultural importance to tribes, shall be addressed. All four criteria for eligibility (36 C.F.R. §§ 60.4(a)-60.4(d)) shall be considered when making determinations of eligibility. In cases where criterion (d) was the only criterion applied in making a prior determination of eligibility, such properties may be reevaluated under the other criteria. Any consulting party may recommend reevaluation;
 3. If a property does not meet the eligibility criteria for listing on the National Register, and thus is not an “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. Determine the effect of the undertaking on historic properties;
 5. Seek to avoid or minimize adverse effects on historic properties. Given FCRPS operational requirements, there may be limited opportunities to avoid some adverse effects;
 6. Encourage creative and innovative ways to mitigate adverse effects to historic properties (see Treatment Plan Principles in Attachment 4);

7. Develop a Systemwide Research Design to support consideration of broad scale domains or themes (see Stipulation VII); and,
8. Implement procedures in the event of emergencies or unanticipated discoveries consistent with 36 C.F.R. § 800.13(b). Procedures specific to individual Projects may be defined in Project-specific PAs.
9. Curate collections consistent with 36 C.F.R part 79.

B. *Communication, Coordination, and Consultation.* Effective communication, coordination and consultation between consulting parties are critical to the successful implementation of this Systemwide PA. As a general principle, the Lead Federal Agencies shall seek to involve consulting parties in an open and interactive manner in the planning for and implementation of activities pursuant to this PA. The primary mechanism for accomplishing this objective is the Project level Cooperating Groups. As further detailed in Stipulation IX.B, the Cooperating Groups serve as the primary forum for communication and coordination with the Lead Federal Agencies about implementation of matters covered in this PA. Communication within the Cooperating Groups is a part of consultation pursuant to 36 C.F.R. part 800, as are the documentation processes described below. Communication within the Cooperating Groups also facilitates, but does not replace, Government-to-Government consultation with tribes.

C. *Professional Qualification Standards.* As required ~~by~~ 36 C.F.R. § 800.2(a)(1), 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 shall apply the standards in a manner commensurate with: (1) the nature and complexity of the specific activity being implemented or the property or resource being investigated or treated, and (2) the knowledge and expertise needed to complete the work.

D. *Public Benefit from Resource Management.* Lead Federal Agencies shall provide for public benefits from implementation of this PA by, among other ways:

1. Public outreach and education;
2. Accumulating and disseminating information to tribal communities, interested members of the public, and the general public to foster an understanding of the history and cultural heritage of the Columbia Basin. Dissemination may include, but is not limited to: visual media presentations, books, and CDs distributed to schools, libraries, and museums; distribution of reports to libraries and repositories consistent with 36 C.F.R. § 800.6(a)(5) and 800.11(c); and, presentation of FCRPS funded research analysis and results in professional venues such as peer reviewed publications and regional and national conferences;
3. Illustrating accomplishments made in implementing this PA (as described in Annual Reports);

4. Using collections for education and research purposes, consistent with 36 C.F.R. § 79.10; and,
 5. Providing opportunities for heritage tourism, as appropriate, using information and resources generated from actions to implement this PA.
- E. *Confidentiality.* In carrying out their responsibilities under the Systemwide PA, the Lead Federal Agencies shall restrict disclosure of 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, consistent with 36 C.F.R. § 800.6(a)(5) and § 800.11(c).^[LJL1]
- F. *Term and Review of the Systemwide PA.* Unless terminated in accordance with Stipulation XV, the term of this Systemwide PA shall be for a period of 30 years from the effective date (see Stipulation XVI.E), after which it shall become null and void unless extended by mutual agreement of the signatory parties within their area of jurisdiction. If the 30 year 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. part 800 with respect to the undertaking. The Systemwide PA shall be reviewed on a regular basis, at intervals not exceeding 5 years, in accordance with Stipulation XI.

III. AREA OF POTENTIAL EFFECTS (APE)

- A. The APE for the undertaking includes all geographic areas within which the undertaking may directly or indirectly cause alterations in the character or use of historic properties. This includes geographic areas identified as being affected at the date of final signature of this agreement and geographic areas where adverse effects are identified in the future. 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.
- B. The APE can include lands held in fee by the United States, lands held in trust by the United States for a tribe or an allottee, lands in which the United States holds a real property interest other than fee title, as well as private or public lands for which the United States currently holds no property interest or access rights. See Stipulation IV.C regarding access.
- C. The Lead Federal Agencies shall address the effects of the undertaking throughout the APE, commensurate with the extent that the undertaking causes the effect.
 1. Where the undertaking is the principal causative factor, the Lead Federal Agencies are responsible for addressing the effects.
 2. 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.

- D. The APE may be discontinuous or interrupted, excluding geographic areas where the undertaking does not cause effects due to attenuation, intervening effects, or other factors. Where there are effects attributable to the undertaking, the Lead Federal Agencies shall conduct a phased implementation, applying the prioritization process defined in Stipulation IV to guide implementation.
- E. The Lead Federal Agencies, in consultation with consulting parties at the Project level, shall determine the Project-specific portion of the APE and provide maps depicting the APE.
1. The APE determination shall be documented in the Project-specific PA or HPMP. The Lead Federal Agencies shall make this determination utilizing the best available data, and consistent with processes for consultation defined in 36 C.F.R. § 800.4(a).
 2. Where delineation of the APE, including attribution of effects, cannot be readily determined with the best available information, the Lead Federal Agencies shall discuss the uncertainty and options for resolving it with the consulting parties at the Project level.
 3. Disputes regarding a Lead Federal Agency proposal for resolving uncertainty shall be addressed via the dispute resolution provisions in Stipulation XII.

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

- A. Because of the geographic scope and complexity of the undertaking, the Lead Federal Agencies shall phase implementation of compliance actions. The Lead Federal Agencies shall determine priorities for identification, evaluation, and treatment activities through discussion with Cooperating Groups using the factors listed in Stipulation IV.B.
- B. Factors to be considered to determine the appropriate phasing of compliance activities include, but are not limited to (in no particular order) the list that follows. These factors can be further described or refined in the Project-specific PA or HPMP:
- Probability of properties being present and of the area being adversely affected by the undertaking
 - The likely type and location of properties
 - Potential for an area or property to be a traditional cultural property (TCP)
 - The extent to which known or potential effects on an identified property are or would be the result of the undertaking (causal links)
 - The potential benefit from management of the property, including access to collections derived from investigations (consistent with 36 C.F.R. part 79)
 - The degree of integrity of the property
 - The risk of loss of integrity to the property caused by the undertaking, including imminence of the threat

- The nature of restrictions placed by the landowner for access, when addressing non-Federal lands
- Extent and reliability of past identification efforts in the area, with a higher priority likely for areas where identification efforts are incomplete or lack reliability
- Potential for loss of tribal knowledge and expertise that might contribute to identification, evaluation, or definition of treatments for TCPs
- The relative uniqueness of the 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 or a Project research design
- The cost and the availability of funds to implement the actions

Not all factors shall be applicable or relevant for each property or compliance action. Priority compliance actions shall be described in Annual Work Plans.

- C. The Lead Federal Agencies shall identify, evaluate, and treat properties affected by the undertaking on lands where the agencies have access. This includes lands where a Lead Federal Agency has jurisdiction (i.e., United States fee title under Lead Federal Agency management) or has successfully obtained necessary access from the fee title holder or agency with jurisdiction.
- When implementing actions on lands that are not under the jurisdiction of any of the Lead Federal Agencies, actions shall be implemented with the authorization or consent of the fee title holder or agency with jurisdiction, given on a voluntary or willing seller basis. The Lead Federal Agencies shall make a good faith effort to negotiate the necessary access from the fee title holder or, in the case of Federally owned lands managed by other Federal agencies, from the agency with jurisdiction.^[LJL2]
 - The terms of access may vary depending on whether the activity to be conducted on the land is identification, evaluation, or treatment. Access terms for evaluation or treatment shall be sufficient to ensure that any materials collected will be permanently curated under conditions that allow for appropriate care, use, and access.
- D. Typically, the Section 106 compliance process is carried out in three sequential steps: identification of historic properties, assessment of effects to historic properties, and resolution of adverse effects. This is so that treatment decisions can be made in a context of a full understanding of the undertaking's effects. However, because of the large size of the APE, the large number of affected and potentially affected properties, and the on-going effects to them, the Lead Federal Agencies do not propose to strictly sequence compliance activities. Instead, at the Project level, prioritization can allow for actions at all points in the process to go forward simultaneously. For example, treatment can proceed at specific eligible properties before evaluation of all affected properties at that specific Project.

V. TRADITIONAL CULTURAL PROPERTIES

Historic properties include TCPs, and therefore all stipulations and references in this PA to “historic properties” or “properties” apply to TCPs. TCPs include properties of traditional religious and cultural importance to an Indian tribe. In order for the Lead Federal Agencies to determine the most appropriate processes to address TCPs and properties of religious and cultural significance to Indian tribes, the Agencies shall implement the following activities to define minimum standards and processes for TCP identification, documentation, and evaluation. These standards and processes shall be defined in consultation with affected tribes, SHPOs, THPOs, and other agencies with jurisdiction. The standards, processes, and products developed in Stipulation V.A - D shall be incorporated within Project-specific PAs and/or HPMPs, and may be further refined or tailored to meet Project-specific conditions, as appropriate.

- A. *Study status.* The Lead Federal Agencies shall compile a list and description of previous and current efforts to identify, evaluate, and treat TCPs related to the undertaking. See Stipulation VIII, General Products, and Attachment 2.
- B. *Documentation Processes.* Within one year of execution of the Systemwide PA, the Lead Federal Agencies shall initiate meetings with affected tribes, SHPOs, THPOs, and other agencies with jurisdiction to define standard processes to be used to identify, document, and evaluate TCPs. Minimum documentation standards and requirements established shall be of a nature to be applied at a systemwide level. The initial meeting may be held as part of the Systemwide Meeting described in Stipulation IX.
- C. *Process to Determine National Register Eligibility.* The Lead Federal Agencies, in consultation, shall seek to establish a process to determine National Register eligibility for TCPs that will provide the Lead Federal Agencies or other agency with jurisdiction with sufficient information to demonstrate the basis for eligibility under any of the four criteria. The process shall address tribal concerns about confidentiality of data (taking into account expressed tribal desires to minimize disclosure of sensitive information) consistent with Stipulation II.E. This process will be developed concurrently with the development of documentation processes in Stipulation V.B.
- D. When the Lead Federal Agencies, in consultation, make determinations of adverse effect to TCPs, they shall resolve adverse effects in accordance with the terms of this PA. Specific treatment plans shall be developed at the Project-specific level, as prioritized through appropriate Cooperating Groups, in consultation (pursuant to Stipulation IX), and consistent with the Treatment Plan Principles in Attachment 4.

VI. PROJECT-SPECIFIC PAs, HPMPs, OR BOTH, TO COMPLY WITH SECTION 106

- A. This Systemwide PA allows for the Lead Federal Agencies to meet their Section 106 responsibilities through the development and implementation of a Project-specific PA, or through the development and implementation of a signed Project HPMP that meets the requirements of a Project-specific PA (Stand-alone HPMP). The Lead Federal Agencies may

fulfill this Project-specific compliance requirement through the use of existing Project PAs or HPMPs if they meet, or are revised to meet, the terms of this Systemwide PA. The schedule for preparation of drafts of these documents is in Attachment 2.

- B. Project-specific PAs must be consistent with this Systemwide PA and contain the elements of Stipulation VI.C. Stand-alone HPMPs must be consistent with this Systemwide PA, contain the elements of Stipulation VI.C., and contain the elements identified in Attachment 4. HPMPs that have an accompanying Project-specific PA (HPMPs that are not Stand-alone HPMPs) need only be consistent with this Systemwide PA and contain the elements identified in Attachment 4.
- C. For each Project, the new or revised Project-specific PA or Stand-alone HPMP shall:
1. Define the Project-specific portion of the APE consistent with Stipulation III;
 2. Identify consultation procedures appropriate for the Project;
 3. Refine the prioritization process described in Stipulation IV and describe additional Project-specific processes;
 4. Provide for additional streamlining of the Section 106 review process through exempting routine actions that have limited or no potential to adversely effect historic properties in addition to exemptions described in Attachment 6, and/or by setting up other Project-specific coordination procedures that expedite the Section 106 review process;
 5. Provide a schedule for evaluating National Register eligibility of all unevaluated properties, including TCPs.
 6. 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 shall be implemented when that threshold is reached;
 7. Define additional processes to take historic properties into account in emergency situations or in discovery situations; and,
 8. Define processes to periodically review the effectiveness of the Project-specific PA.
- D. Once completed, the Project-specific PA or Stand-alone HPMP goes into effect in the following manner:
1. In the case of a Project-specific PA, through its execution by the Lead Federal Agency (or Agencies) and appropriate parties, which shall include affected entities with jurisdiction and applicable SHPOs/THPOs; or,

2. In the case of a Stand-alone HPMP, through a letter from the appropriate Lead Federal Agencies committing the Agencies to adhere to all the terms of the HPMP, with concurrence from the appropriate entities within the area of their jurisdiction, in consultation with the signatories to this Systemwide PA with an interest in that Project.
- E. *Review of existing PAs/HPMPs.* If the intent is to use an existing Project PA or HPMP for compliance, 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. Existing Project PAs or HPMPs shall remain in effect during this review process. Should there be any material inconsistencies between this Systemwide PA and an existing Project PA or HPMP that would be used as a Project-specific PA or Stand-alone HPMP, then that Project PA or HPMP shall be revised or amended to be consistent with this Systemwide PA in accordance with the schedule in Attachment 2.
- F. All updates or revisions to an existing Project PA or HPMP, or the development of any new Project-specific PAs or Stand-alone HPMPs, shall be developed with involvement of the appropriate Cooperating Group(s), in consultation with consulting parties appropriate to the Project area, and with input from interested members of the public as appropriate.
- G. Consulting parties shall be provided the opportunity to comment on drafts of the revised or new Project-specific PAs or Stand-alone HPMPs, and the Lead Federal Agencies shall take these comments into account in finalizing the Project-specific PAs or Stand-alone HPMPs. Consulting parties shall 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 shall proceed to finalize the PA or HPMP.

VII. SYSTEMWIDE RESEARCH DESIGN

- A. To date, the Lead Federal Agencies have largely focused Section 106 compliance efforts at the Project level, particularly on localized measures to address adverse effects to historic properties. While this focus remains a priority, the Lead Federal Agencies also believe that given the geographic scope of the undertaking, it is important to facilitate an understanding of the history and culture of the Columbia Basin and its peoples on a broader scale than the Project level. In order to facilitate a broader view as this Systemwide PA is implemented, the Lead Federal Agencies shall prepare a Systemwide Research Design.
- B. The Systemwide Research Design ~~will~~would be developed to encourage consideration at the Project level of research and educational objectives that have application on a broader, potentially regional level. The Systemwide Research Design could be used, for example, in updating Project HPMPs and research designs. It could also aid in defining priorities at a Project, evaluating sites for the National Register, and designing site treatment plans or evaluating contract proposals. The Systemwide Research Design ~~will~~ould not replace Project-specific research designs, but it could^[LLJ3]:

1. Define broad ranging themes and study domains that span the region and pose associated research questions that would contribute to understanding those themes and domains, encompassing a full array of potential property types, including but not limited to prehistoric and historic period archeological properties, and TCPs;
 2. Identify types of materials or data that are important to analyze and collect to address research questions;
 3. Define methods to enable data comparison between properties and across geographic areas; and,^[LJL4]
 4. Identify potential audiences for the information, and means to make the information accessible and meaningful.
- C. The Systemwide Research Design shall be prepared by the Lead Federal Agencies with input and assistance from the Cooperating Groups and consulting parties. Opportunity for input and assistance during preparation shall also be afforded to interested members of the public^[s5]. The Lead Federal Agencies shall review and revise the Systemwide Research Design as needed. Any substantive^[s6] revisions will be prepared with the same opportunities for input and assistance as for the initial design.

VIII. GENERAL PRODUCTS

- A. *Annual Report.* The Lead Federal Agencies shall prepare an Annual Report documenting actions and planning efforts that demonstrate their good faith efforts to satisfy the terms of this PA. The reporting period shall be the fiscal year from October 1 to September 30. The Annual Report shall be distributed to consulting parties to this PA.
1. The first Annual Report after the effective date of this PA shall present baseline data against which future progress is measured.
 2. The second Annual Report after the effective date of this PA shall present a listing and description of all previous and current efforts to identify, evaluate and treat TCPs related to the undertaking, to be updated annually.^[s7]
 3. In subsequent reporting years, the Annual Report shall address issues and describe accomplishments at the systemwide and Project levels, including:
 - a. *Narrative Summary.* This will describe systemwide accomplishments, systemwide issues, actions taken to resolve issues, and on-going work and Project highlights.
 - b. *Tabular Data.* Project accomplishments displayed as tabular data will include accomplishments in the categories of inventory, evaluation, treatment, and curation.

- c. *Specific Components of the Report.* For each Project, the Annual Report will include:
- i. A summary of accomplishment highlights for that reporting year;
 - ii. A description of lessons learned;
 - iii. A description of properties under evaluation in the current year;
 - iv. A list of deliverables;
 - v. A description of treatments;
 - vi. A summary of collections management activities; and,
 - vii. A description of on-going and completed public education activities.
- B. *Annual Work Plans.* The Lead Federal Agencies, with input and assistance from Cooperating Groups, shall prepare Annual Work Plans for each Project. [LJL8] The Lead Federal Agencies shall use Annual Work Plans to describe priority Project compliance activities for the coming fiscal year. At a minimum, the Annual Work Plan and its supporting materials shall include the elements in Attachment 4.
- C. *Handbook.* The Lead Federal Agencies shall maintain a handbook for internal use that describes interagency communication and coordination protocols among the Lead Federal Agencies. The Handbook shall be available to the public. (http://www.efw.bpa.gov/environmental_services/Handbook2007.pdf).

IX. CONSULTATION, COMMUNICATION, AND COORDINATION

While the Lead Federal Agencies retain final decision making authority for all their actions relating to the undertaking, communication, coordination, and consultation are 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 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 and related memoranda of agreements, which are described further in the Handbook[s9]k.
- B. *Communication and Consultation between the Lead Federal Agencies and Consulting Parties: Cooperating Groups.* The principal mechanism for communication between the Lead Federal Agencies and consulting parties is the Cooperating Groups. The Cooperating Groups serve as a regular forum in support of intergovernmental communications for the purpose of exchanging views, technical information, and planning advice relating to the Lead Federal Agencies' Section 106 compliance, with the exception of procurement implementation (development and issuance of contracts for compliance activities) which remain the sole responsibility of the Lead Federal Agencies. Communication within the Cooperating Groups contributes toward and facilitates consultation pursuant to 36 C.F.R. part

800, and often will precede the consultation and documentation processes described in Stipulation IX.E, below. Communication within the Cooperating Groups also facilitates, but does not replace, Government-to-Government consultation with tribes.

Cooperating Groups were established by Lead Federal Agencies following signature of the SOR RODs in 1997. Active Cooperating Groups at the time of signature of this Systemwide PA are:

- One group for Bonneville, John Day, and The Dalles Projects (“Wanapa Kootkoot”)
- One group for Dworshak, McNary, Little Goose, Lower Granite, Lower Monumental, and Ice Harbor Projects (“Payos Kuus Cuukwe”)
- One group each for Hungry Horse, Chief Joseph, Libby, and Albeni Falls Projects
- Two groups for Grand Coulee

C. *Cooperating Group Responsibilities.* Each Cooperating Group has or shall prepare Operating Guidelines and meet no fewer than four times per year on a schedule agreed upon by that group. The Operating Guidelines for each group describe the scope of discussion within that group.

1. The Cooperating Groups may assist the Lead Federal Agencies by, among other things:
 - a. Providing input to aid with determining the Project-specific portion of the APE;
 - b. Helping Lead Federal Agencies determine the appropriate priorities and phasing for compliance activities per Stipulation IV;
 - c. Participating in drafting plans and schedules for activities to implement this PA;
 - d. Helping to draft or review Project-specific PAs and/or HPMPs, and Annual Work Plans for the associated Project;
 - e. Providing data and reporting accomplishments to incorporate into Annual Reports; and,
 - f. Providing information or recommendations to Lead Federal Agencies on other matters relating to the implementation of this PA.
2. Timely input from the Cooperating Groups is essential to allow the Lead Federal Agencies to effectively consider offered information, advice, and recommendations. Timely input is particularly important on Annual Work Plans, review of systemwide documents, and other discrete action items. Failure by a Cooperating Group to establish a schedule, or failure by the group or its members to meet an established schedule, shall not prevent the Lead Federal Agencies from proceeding with an action. A decision by the Lead Federal Agencies to proceed when the Cooperating Group is unable to provide input in a timely or agreed upon manner 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. CRSC members of a Cooperating Group are responsible for ensuring that pertinent information from the Lead Federal Agencies, the JOC, the CRSC, as well as the other Cooperating Groups is shared at Cooperating Group meetings and Systemwide Meetings. CRSC members of the Cooperating Group are also responsible for ensuring that if a member of a Cooperating Group cannot participate in a Cooperating Group meeting, they are provided materials shared during that meeting. 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. *Section 106 Consultation Documentation*

Project-specific PAs and HPMPs. Determinations of the Project-specific APE shall be documented and provided for comment as part of the development of a Project-specific PA and/or HPMP. Stipulation VI and Attachment 4 set forth the requirements for Project-specific PAs and HPMPs. Lead Federal Agencies will consult on Project-specific PAs and Stand-alone HPMPs and offer for signature those documents to consulting parties with an interest in the Project, consistent with processes defined in Stipulation VI.D.

1. *For specific properties.* Except when another agency is the land manager as qualified in Stipulation IX.E.3 below, the Lead Federal land managing agencies (Corps or Reclamation), with the participation of BPA, shall prepare written documentation of the following findings and provide this documentation to the appropriate consulting parties for comment:
 - Determinations of National Register eligibility of a property, including any reevaluations under additional criteria;
 - Determinations of the undertaking's effect on a property eligible for inclusion or listed on the National Register; and,
 - Proposed treatment measures to resolve the undertaking's adverse effects on an historic property.
 - a. The consulting parties shall have 30 calendar days from receipt of specific documentation to comment. The Lead Federal land managing agency and BPA shall consider the comments.
 - b. If objections are raised, the Lead Federal Agency and BPA shall continue consultation in an effort to resolve the objection. If unable to resolve disputes, the dispute resolution procedures in Stipulation XII will be followed.
 - c. If no comments are received, the Lead Federal land managing agency and BPA may proceed with their proposed plan.
 - d. In the case of an adverse effect determination, the Lead Federal Agencies shall notify the ACHP and invite its participation in the resolution of adverse effects only

- if the applicable SHPO/THPO and/or land manager [s10] with jurisdiction disagrees with the Lead Federal Agency determination.
2. When another agency is the Federal Land Manager at a Project (e.g., the National Park Service for portions of Lake Roosevelt), the Lead Federal Agencies shall consult with the other Federal Land Manager to determine the best process for coordinating determinations of eligibility, effect, and appropriate mitigation for adverse effects, and the process for submitting such findings for comment by the appropriate SHPO, THPO, affected tribes, and other affected parties. Such processes may be described in a Project-specific PA and/or HPMP or in a separate agreement between the Lead Federal Agencies and the other Federal Land Manager.
 3. The specific procedures for providing documentation may be further detailed in a Project-specific PA or HPMP since it may vary between Projects.
- F. *Communication with the Public.* The Lead Federal Agencies may involve interested members of the public in the implementation of this PA in a variety of ways, including opportunities to provide input or comment on planning documents, as appropriate, as well as standard procedures to inform the public, such as the posting of CRSC agendas on the web and invitation to the Systemwide Meeting **described in Stipulation IX.G below.** In addition, interested members of the public may attend (though may not be standing members of) Cooperating Group meetings. They would be invited to Cooperating Group meetings on a case-by-case basis, through procedures described in a Cooperating Group's Operating Guidelines. [s11] Other mechanisms for involving the interested public shall be developed in the Project-specific PA or HPMP.
- G. *Systemwide Meeting.* The Lead Federal Agencies shall continue to organize a Systemwide Meeting that serves as a forum for reporting accomplishments, sharing information, and discussing common issues. Participants shall typically be all parties involved in the implementation of the PA. The meeting shall be open to consulting parties and interested members of the public to the extent that sensitive information (per Stipulation II.E) is protected (for example, through redacted publications, or open and closed sessions). The Systemwide Meeting shall be held at least every two years following the effective date of this PA.

X. PARTICIPATION OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

The ACHP shall be involved consistent with the terms of this PA and its regulations, except as noted in Stipulation IX.E.6 [s12] regarding adverse effects determinations. The Lead Federal Agencies shall provide the ACHP with draft copies of all Project-specific PAs developed under the terms of this Systemwide PA, as well as any Stand-alone HPMPs, to afford the ACHP the opportunity to review and comment. The Lead Federal Agencies shall offer the ACHP the opportunity to be a consulting party to Project-specific PAs and Stand-alone HPMPs.

XI. REVIEW OF THE PA

- A. The Lead Federal Agencies shall review this PA every five years from its effective date to ensure that its terms remain relevant and are being met. The Lead Federal Agencies shall review the PA as follows:
1. The Lead Federal Agencies shall prepare a summary of accomplishments and identify issues that are affecting or may affect the ability of the Lead Federal Agencies to meet the terms of this Systemwide PA. The Lead Federal Agencies shall solicit comment from consulting parties in preparing this summary. The summary shall be distributed to the consulting parties to the PA, to Cooperating Group members, and to potentially interested members of the public^[LJL13]. The Lead Federal Agencies shall coordinate a general meeting (using the Systemwide Meeting if appropriate) to discuss and seek to resolve identified issues. The Lead Federal Agencies shall prepare a summary of the outcome of discussion on identified issues and distribute the summary to the consulting parties and any other parties who submitted comments.
 2. After receipt of the Lead Federal Agencies' summary, a signatory party may request, in writing, additional consultation with the Lead Federal Agencies concerning unresolved issues identified during the review. If such consultation does not resolve the issue, the signatory party may utilize the dispute resolution provisions at Stipulation XII.

XII. DISPUTE RESOLUTION

- A. The Lead Federal Agencies shall attempt in good faith to resolve any disputes arising out of or relating to this PA through informal discussions. Any disputes not resolved informally in the normal course of business shall be addressed as described below.
- B. *Signatory Parties.* Should a signatory party raise an objection to or have a dispute regarding fulfillment of the terms of this Systemwide PA, that party shall 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 shall be resolved using processes defined in the pertinent Project-specific PA or Stand-alone HPMP. If the Lead Federal Agencies determine that the objection/dispute has systemwide program implications, or when no Project-specific PA or Stand-alone HPMP is yet in place, then the objection/dispute shall be addressed using the following processes:
1. Upon receipt of a written objection or dispute from a signatory party, the Lead Federal Agencies shall consult with the disputant to resolve the objection or dispute. The Lead Federal Agencies shall also notify the other signatory and concurring parties of the objection or dispute. If the objection is specific to a Project that as yet has no Project-specific PA or Stand-alone HPMP, only the parties with an interest in that Project will be notified.

2. If the Lead Federal Agencies cannot resolve the objection or dispute in consultation with the objecting party, then within 60 calendar days of that determination they shall forward to the ACHP documentation of the objection or dispute, a written proposal for its resolution, and request the ACHP's comment. The Lead Federal Agencies shall also notify the signatory and concurring parties of the written proposal for its resolution and provide signatory parties the opportunity to comment on the proposal.
 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 shall 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. Not concur with the Lead Federal Agencies' proposed response, but will provide the Lead Federal Agencies with recommendations, which those Agencies shall 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 shall 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 objection or dispute shall remain unchanged. While the objection or dispute is being resolved, the PA remains in effect without change or suspension.
- C. *Concurring Parties.* 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 Stand-alone HPMP and does not have systemwide program implications, then the objection shall be resolved using the processes defined in the pertinent Project-specific PA or HPMP. If the objection or dispute has systemwide program implications, or when no Project-specific PA or Stand-alone HPMP is in place, then the Lead

Federal Agencies shall notify the other signatories of the objection, and provide an opportunity for comment. If the objection is specific to a Project that as yet has no Project-specific PA or Stand-alone HPMP, only the parties with an interest in that Project will be notified. The Lead Federal Agencies shall render a decision regarding the objection, taking into account the comments, if any, of the signatories, and notify signatory and concurring parties of the decision.

- D. *Other Objectors.* Should a written objection pertaining to the implementation of this Systemwide PA be raised by any entity which did not sign the Systemwide PA, including a member of the public, 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 shall 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 in place, and the Lead Federal Agencies determine that the objection is not **frivolous**, then the Lead Federal Agencies shall notify the signatories to this PA. If the objection is specific to a Project that as yet has no Project-specific PA or Stand-alone HPMP, only the parties with an interest in that Project will be notified. The Lead Federal Agencies shall then take the objection into account, consulting with the objector and with the other signatory parties to resolve the objection. The Lead Federal Agencies shall then render a decision regarding the objection, and notify signatory and concurring parties of the decision. Should the Lead Federal Agencies determine that the objection is **frivolous**^[s14], they shall so notify the objector in writing **stating as much** and may proceed with no further consideration of such objection.
- E. 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 shall notify the Lead Federal Agencies of the issue.
- F. Disputes or objections that are Project-specific and do not have systemwide implications 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 **Stipulation XIII of this** Systemwide PA shall be followed.

XIII. AMENDMENT

- A. Any signatory party to this PA may request in writing to the Lead Federal Agencies that the Systemwide PA be amended. If the Lead Federal Agencies determine that the request is pertinent to this Systemwide PA, then the Lead Federal Agencies shall initiate consultation with the signatory and concurring parties to this Systemwide PA to consider such amendment.
- B. If the Lead Federal Agencies decide to propose an amendment to this Systemwide PA, the Lead Federal Agencies shall consult with the signatory and concurring parties.

- C. If the request for amendment or a proposed amendment is determined to be specific to a Project, then the requesting party shall be directed to use the amendment process defined in the appropriate Project-specific PA or HPMP. If the Project as yet has no Project-specific PA or Stand-alone HPMP, the appropriate Lead Federal Agencies shall initiate consultation with the signatory and concurring parties with an interest in that Project using the processes defined in the Systemwide PA.

XIV. 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 shall consult with the party to identify any mutually acceptable measures that would avoid the party's withdrawal. If mutually acceptable measures are identified that would require amendment to this Systemwide PA, then the amendment procedures of Stipulation XIII shall apply.
- B. If mutually acceptable measures are not identified and a party withdraws, the Lead Federal Agencies and ACHP shall review this PA to determine if it needs to be amended. If amendment is needed, processes defined in Stipulation XIII would apply. Withdrawal by a signatory party shall terminate application of the Systemwide PA within the area of jurisdiction of that entity.

XV. 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 Systemwide PA is terminated, the Project-specific PAs or Stand-alone HPMPs created under the umbrella of this Systemwide PA will be reviewed by the Lead Federal Agencies and the ACHP, in consultation with the consulting parties to the Project-specific PA, to determine if they could remain in effect. If a Project-specific PA or Stand-alone HPMP 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 activities at that Project that would otherwise have been addressed by this PA.

XVI. AUTHORITIES, EFFECTIVE DATE, AND OTHER PROVISIONS

- A. This PA does not supersede or replace preexisting Section 106 agreements relevant to the 14 Projects. However, should there be a disagreement, the terms and provisions of this Systemwide PA take precedence.
- 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 the 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 the 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 shall become effective on the date that it has been signed by the Lead Federal Agencies and the ACHP. The Lead Federal Agencies shall 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:

U.S. Army Corps of Engineers, Walla Walla District

By _____ Date _____

Title:

U.S. Army Corps of Engineers, Portland District

By _____ Date _____

Title:

U.S. Army Corps of Engineers, Seattle District

By _____ Date _____

Title:

Tribal Historic Preservation Office, Confederated Tribes of the Colville Reservation

By _____ Date _____

Title:

Tribal Historic Preservation Office, Confederated Tribes of the Umatilla Indian Reservation

By _____ Date _____

Title:

Tribal Historic Preservation Office, Confederated Tribes of the Warm Springs Reservation of Oregon

By _____ Date _____

Title:

Tribal Historic Preservation Office, Nez Perce Tribe

By _____ Date _____

Title:

Tribal Historic Preservation Office, Spokane Tribe of Indians

By _____ Date _____

Title:

Tribal Historic Preservation Office, Confederated Tribes and Bands of the Yakama Nation

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 & Kootenai Tribes of the Flathead Reservation

By _____ Date _____
Title:

Confederated Tribes of the Umatilla Indian Reservation

By _____ Date _____
Title:

Confederated Tribes of the Warm Springs Reservation of Oregon

By _____ Date _____
Title:

Confederated Tribes and Bands of the Yakama Nation

By _____ Date _____

Title:

Kalispel Tribe of Indians

By _____ Date _____

Title:

Kootenai Tribe of Idaho

By _____ Date _____

Title:

Nez Perce Tribe

By _____ Date _____

Title:

Spokane Tribe of Indians

By _____ Date _____

Title:

CONCURRING PARTIES: [Reserved section for Concurring Parties, if any are identified during consultation]

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: Historic Property Management Plans, Treatment Plan Principles, and Annual Work Plans

Attachment 5: Undertaking Covered by the Systemwide PA, Responsible Agencies, and Funding

Attachment 6: Routine FCRPS Activities for this Undertaking that do not Require Section 106 Consultation

Attachment 1

Authorized Purposes for the Columbia River Mainstem Projects And Lead Federal Agency with Operations 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	1954	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 shall seek to implement actions under this PA consistent with the following schedule. Schedules for completion of Project-specific PAs or Stand-alone HPMPs may be modified in consultation with signatories to this Systemwide PA and other consulting parties with an interest in that Project.

ACTION	SCHEDULE
Annual Report to consulting parties	March 31 following performance year
Systemwide Meeting	Every two years at a minimum
Assess existing Project-specific PAs or HPMPs, and set schedule to update existing or prepare new PAs, as needed	Within six months of effective date of Systemwide PA
Complete drafts of new or revisions to existing Project-specific PAs or HPMPs and circulate for review and comment	Two annually after effective date of Systemwide PA
Initiate meetings with affected tribes, SHPOs, THPOs, and other agencies with jurisdiction to define standard processes to be used to identify, document, and evaluate TCPs.	Initiate within one year of effective date of Systemwide PA
List and description of all TCP studies completed or in progress	Second Annual Report
Prepare a draft Systemwide Research Design	Within two years of effective date of Systemwide PA
Review the Systemwide Research Design	As needed
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.

Affected Indian Tribe or Affected Tribe– consistent with 36 C.F.R § 800.14(f)(1), an affected Indian tribe includes federally recognized tribes that attach religious and cultural significance to historic properties potentially affected by the undertaking, and federally recognized tribes with jurisdiction over tribal lands on which the undertaking has the potential to affect historic properties.

Area of Jurisdiction – geographic regulatory jurisdiction of participants in the Section 106 process. For SHPOs, this means the geographic area of their particular state, excluding areas governed solely by a THPO that has formally assumed the responsibilities of the SHPO for tribal lands in accordance with Section 101(d)(2) of the NHPA. For THPOs, this means tribal lands as defined under NHPA (includes lands within a reservation boundary, and any tribal trust lands external to the boundaries of a reservation).

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 signs 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 consultative role in the Section 106 process for the PA, as defined by 36 C.F.R. § 800.2(c). This includes, among others, the ACHP, SHPOs, THPOs, affected Indian tribes, other affected agencies, signatory parties, concurring parties, and any additional entities invited to participate due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking’s effects on historic properties (see 36 C.F.R. § 800.2(c)(5)).

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. The Cooperating Groups serve as the primary forum for consultation between the Lead Federal Agencies and consulting parties.^[LJL15]

Creative Mitigation – consideration and application of a full array of treatment options as mitigation for the undertaking’s adverse effects. See Treatment Plan Principles in Attachment 4 for additional details.

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

Federal Land Managing Agency – the Federal agency with the particular authority to manage United States owned lands affected by the undertaking. For purposes of this PA, the Federal Land Managing Agency shall be either the Corps or Reclamation, or in some instances it may be the USDI National Park Service or the USDA Forest Service.

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 (HPMP) – plans that are technical, substantive frameworks for describing Section 106 compliance activities 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 is called a “Stand-alone HPMP” and it must also contain the elements described in Stipulation VI.C.

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 Member of the Public – an individual or entity that is not a consulting party (until invited to be so), but which the Lead Federal Agency believes may be interested in information about the undertaking and its effects on historic properties based on, for example, the Lead Federal Agency’s prior experience or contact with the individual or entity, the recommendations of a SHPO or THPO, affected Indian tribes, or the individual or entity’s own initiative in providing its views. See 36 C.F.R. § 800.2(d).

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 United States has a right to use property for a specific purpose, but does not own fee title to the property.

Lead Federal Agency – the U.S. Army Corps of Engineers, the Bureau of Reclamation, and/or the Bonneville Power Administration, depending on the circumstances. Unless otherwise noted, implementation or compliance actions taken pursuant to this Systemwide PA shall typically be two of the Lead Federal Agencies, depending on the locale: for actions at Corps Projects, the “Lead Federal Agencies” shall be the Corps as the Federal Land Manager with participation by BPA; for actions at Reclamation Projects, it shall be Reclamation as the agency with fee title with participation by BPA. See Attachment 5 for further details.

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 VI.C.

Property – all historic properties and, for identification and/or evaluation purposes, all locations/sites affected by the undertaking that may contain evidence of past human use or traditional religious and cultural importance that have yet to be identified/evaluated.

Reservoir – a body of water impounded by a dam and operated for water storage and other purposes. This differs from “lakes,” which are bodies of water impounded by dams 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 that signs the PA and has authority or responsibility under the terms of the PA.

Stand-alone HPMP – signed Project-specific HPMP that meets the requirements of a Project-specific 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.” National Park Service, National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (1990) (“National Register Bulletin 38”). The property must meet the requirements defined in 36 C.F.R. § 60.4 and National Register Bulletin 38. Properties of traditional religious and cultural importance to a tribe are a type of TCP.^[LJL16]

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 purposes of this PA, the undertaking includes all construction (routine and non-routine) and operation and maintenance activities required for current and future operation of 14 FCRPS projects. See Attachment 5.

Attachment 4

Historic Property Management Plans, Treatment Plan Principles, and Annual Work Plans

Historic Property Management Plans

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

- Existing commitments from other MOAs or PAs in effect (such as the IDU PA), where applicable.
- A research design that provides an historic context for property evaluation for eligibility to the National Register. The research design shall define research domains or historic themes applicable to the area, define characteristics of property types associated with historic themes, and identify data gaps. Project-specific research designs should incorporate applicable elements of the Systemwide Research Design.
- A summary of significant past investigation and management activities, and a list of associated products.
- A list of properties, with their National Register eligibility status indicated.
- Information about historic 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 historic 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 determining when and how to conduct peer review of research or educational products.
- A process for public outreach and education, including potential Heritage Tourism opportunities.
- General standards for field work, analysis, reporting, and site treatment.

The HPMP may also include, as appropriate, relevant Lead Federal Agency commitments pursuant to other resource management 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.

| If an HPMP also serves as the Project-specific compliance document (i.e., is a Stand-alone HPMP), in the absence of a Project-specific PA, the HPMP must also contain the procedures identified in Stipulation VI.C and be consistent with the terms and conditions of the Systemwide PA.

Treatment Plan Principles

- Treatment plans shall be prepared for properties determined eligible for or that are already listed on 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. Cooperating Groups will be involved in plan preparation, and consultation with consulting parties will occur consistent with the processes defined for that Project in the Project-specific PA or Stand-alone HPMP.
- Where there are multiple sites, selection of sites for preparation of treatment plans shall be prioritized based on consideration of an array of factors, consistent with Stipulation IV of this Systemwide PA and the applicable Project-specific PA or Stand-alone HPMP.
- Except for TCPs as discussed below, plans shall be prepared with input and assistance from the Cooperating Groups, consulting parties to this PA, and other interested members of the public as determined necessary by the Lead Federal Agencies.
- 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 shall be determined in consultation with the tribe. The SHPO would be involved if a TCP was on lands outside of reservation boundaries.
- The Lead Federal Agencies shall consider creative mitigation options. Creative mitigation includes an array of options for treatment of adverse effects for a diverse range of historic property types. Consideration may include, but not be limited to: site protection or stabilization; data recovery, including historic documentation or Historic American Engineering Record/Historic American Buildings Survey records; historical or oral history research; analysis of existing collections; monitoring; and public educational materials or opportunities. Some factors that may be considered in selecting a mitigation option include, but are not limited to, the National Register criteria under which a property has been determined eligible for listing, feasibility, and cost. Off-site treatments may be implemented consistent with Agency authorities. When a property is on land not held in fee title by one of the Lead Federal Agencies, on-site treatments can occur only with permission from the landowner or agency with jurisdiction.
- A process for determining appropriate resource-specific treatments for historic properties adversely affected by the undertaking as the undertaking is implemented at that Project will be defined.

Annual Work Plans

| The Annual Work Plan for each Project shall be developed by the Lead Federal Agencies ~~within~~ input and assistance from Cooperating Groups and coordination with consulting parties. 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.
- List of anticipated compliance actions forecasted for the next five years.

Attachment 5

Undertaking Covered by this Systemwide PA, Responsible Agencies, and Funding

Undertaking Covered by the Systemwide PA

The undertaking covered by the Systemwide PA is the operation and maintenance of the 14 Columbia and Snake River Federal hydropower dams of the Federal Columbia River Power System for all of their multiple authorized purposes. For purposes of this PA, the undertaking includes all construction (routine and non-routine) and operation and maintenance activities required for current and future operation of the FCRPS.

The following non-exclusive list contains examples of activities and programs that are not covered under the terms of this PA because, for instance, they are covered by another PA, are not part of the undertaking, or the Lead Federal Agencies comply through individual Section 106 reviews:

- Canals, ditches, and laterals and facilities (other than facilities at Grand Coulee Dam) that are associated with Reclamation's Columbia Basin Project
- Construction and maintenance of BPA's transmission system
- Compliance with NAGPRA, Sections 5, 6 & 7
- Corps Section 10/404 Regulatory Permits

Responsible Agencies

For most of the activities encompassed by the undertaking, there shall typically be two Lead Federal Agencies involved: the Project's operator (the Corps or Reclamation depending on the Project) and BPA, which provides direct funding for the power portion of operations activities, including funding for operation and maintenance activities.

For some activities encompassed by the undertaking, there may be only one Lead Federal Agency involved, the Project operator. This would be the case for an activity that is not classified as a "power" or "joint use" (which includes hydropower), and for which all funding associated with the activity is from Congressional appropriations (no BPA direct funding is involved). An example of this might be costs associated with navigation or maintenance of navigation locks.

It is unlikely that BPA would ever be the only one of the Lead Federal Agencies involved in an activity implemented under the Systemwide PA, since it does not operate the Projects, and it does not manage any Project lands relative to the undertaking (BPA does manage substation properties, but these are part of the transmission system and are not covered by this PA).

Funding

This Systemwide PA is not a funding document. Nonetheless, in response to comments and questions, the Lead Federal Agencies provide the following background regarding how they interact to provide funding for historic properties management at the Projects. The Corps and Reclamation respectively, operate and maintain the FCRPS Projects. The costs of operation and maintenance are classified by the agencies according to the Project purposes they support: “joint use” purposes include operations and maintenance that support the multiple Project purposes (including power). With ratepayer monies, BPA directly funds the Corps and Reclamation for the power share of operation and maintenance costs—specific power-only operations and maintenance, and the power share of joint use operations and maintenance. The Corps and Reclamation, respectively, fund the non-power shares of operation and maintenance. 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. Historic properties compliance activities are included in the operation and maintenance of the FCRPS Projects.

As agreed by the three agencies following the System Operation Review, a specific budget of \$4.5 million annually, for 15 years (apportioned at \$3 million for Corps Projects and \$1.428 million annually for Reclamation Projects) is allocated from the operation and maintenance (O&M) budget specifically for historic properties program compliance. Please see the FCRPS Cultural Resource Subcommittee Handbook. This targeted allocation of \$4.5 million annual is often referred to by the Lead Federal Agencies as “fenced funds” which are not intended by the Agencies to be applied to other O&M purposes. Thus, while this PA is intended to cover multipurpose operations and is in that sense broad, such that activities of the undertaking not funded through the “fenced funding” may be covered, the reverse is not true: just because this PA covers the broad undertaking does not mean that “fenced funding” can be expended beyond the intended historic properties program boundaries, unless otherwise agreed to by the JOC. Appropriate use of fenced funding is discussed in a separate MOA.

Attachment 6

ROUTINE FCRPS ACTIVITIES FOR THIS UNDERTAKING THAT DO NOT REQUIRE SECTION 106 CONSULTATION

The following routine activities have little or no potential to cause effects on historic properties. This list is intended for use by Lead Federal Agency cultural resource specialists when activities associated with the undertaking are proposed at any of the 14 Projects. Cultural resource specialists shall determine whether proposed activities fall within one of the exempt categories. If so, the Lead Federal Agencies have no further obligation to consult on that activity and will document the finding of no potential to cause effects. This list is not intended to preclude agencies from identifying other activities as having no potential to cause effects.^[s17]

1. Relinquishment of easement or non-fee interests in real estate^[s18]. The relinquishment does not involve the abandonment or disposal of federally owned buildings or structures.
2. Transfer of real estate to management by another Federal agency with equal responsibility for complying with Sections 106 and 110 of the NHPA.
3. Blading or re-blading, excavation, or ground clearing within fill, or where existing ground disturbance is so extensive as to preclude existence of intact cultural deposits, and no known sites are present.
4. Use of existing gravel pits, including further materials extraction and stockpiling within the pit, where no lateral expansion of the source will occur.~~.-~~
5. Replacement or restoration of existing rip rap where no new ground disturbance will occur.
6. Adding rock fill or gravel to roads where no new ground disturbance will occur.
7. Installation of outdoor furniture, and trimming, removal, and replacement of vegetation in landscaped areas (i.e., office and facility grounds and lawns) through cutting, chemical treatment, uprooting, planting and grubbing with hand tools.
8. Treatment of weed infestations that does not violate the chemical label, involve ground disturbance, or is within artificially landscaped areas.
9. Non-invasive planting and seeding for habitat restoration and surface stabilization where no ground disturbance will occur.
10. Encroachment thinning using hand methods to lop branches and cut small trees and brush where material is dropped in place.
11. Demolition or removal of buildings or structures that are less than 50 years old, or have been determined “not eligible” for the NRHP in consultation with the SHPO/THPO and where no other historic properties are in the immediate vicinity. This does not apply to additions that are to be removed from historic properties.

12. Maintenance, repair, or modification to interiors or exteriors of existing buildings and structures that are less than 50 years old, or have been determined “not eligible” for the National Register in consultation with the SHPO/THPO, where there are no other historic properties in the immediate vicinity.
13. Non-abrasive or non-invasive cleaning of the exterior of structures or buildings.
14. Maintenance, repair and replacement of fence lines that are less than 50 years old where no new ground disturbance occurs, where the fence is not located within the boundaries of an historic property, or has been determined “not eligible” for the National Register in consultation with the SHPO/THPO.
15. Rodent control that does not involve ground disturbance.
16. Installation of signs and markers on existing buildings or structures that are less than 50 years old, or where no ground disturbance will occur or where installation is confined to disturbed areas.
17. Installation, placement, repair, or replacement of monitoring equipment where no ground disturbance will occur. Such activities include installation of stream flow or dissolved gas gauges, weather stations, animal traps, and other monitoring or transmitting devices such as security equipment.
18. Excavations for removing or replacing tile, ditches, fire lines, dikes, levees, pipes, pipelines, cables, power poles, telephone lines, fiber optic lines, gates, and cattle guards, where no such excavations, including heavy equipment operation, would take place outside of the original zone of disturbance.
19. Small bore (less than 6 inch diameter) drilling.
20. Repair, replacement and installation of energy conservation, health and life safety, and security measures that do not visually affect the historic or architectural values and character defining features of historic properties.
21. Repair or replacement of equipment or materials that is not original to an historic structure.
22. Construction of small, above ground structures within existing facilities, where the location of the proposed structure has been previously disturbed, and where there is no potential to affect properties that are eligible or potentially eligible for the National Register. Such structures include, but are not limited to: above ground storage tanks, loading docks, sanitation devices, visitor registers, lighting and kiosks.
23. Installation of hunting or viewing blinds, wildlife habitat structures including goose baskets, bird houses, nesting platforms, raptor perches, guzzlers and bat houses, which do not involve ground disturbance.
24. Maintenance and widening of existing trails, walks, paths and sidewalks within previously disturbed areas.
25. Maintenance within existing road or parking lot profiles, such as repaving, grading, cleaning inboard ditches, repairing, brushing or replacing culverts, guards, and gates within existing disturbed areas.



Oregon

Theodore R. Kulongoski, Governor

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10 June 2008

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



Re: Comments on FCRPS Draft PA dated 1/31/2008

Dear Kimberley,

Having received the latest draft of the Federal Columbia River Power System (FCRPS) Programmatic Agreement (PA), and having had our recent meeting to discuss our office's comments on the draft PA, I wanted to take a moment to draft up my summary comments on this latest draft. However, before doing so I would like to state that it is clear that this draft has undergone major revisions and our office is pleased to see the work that has been accomplished. We believe it to be a much stronger document, and one that actually has a purpose, as opposed to my comments on the previous draft. My specific comments on the latest draft are included below:

Revised PA General Comments

The initial portion of the PA includes a number of Whereas statements outlining the basis for the document. The 11th Whereas summarizes the various tribes that the Lead Federal Agencies routinely consult with. Our office has recently been notified by Oregon's Legislative Commission on Indian Services that the Confederated Tribes of the Grand Ronde Reservation should be consulted for any projects in the Cascade Locks area which would fall within the Bonneville Pool area. I wanted to be sure that you are aware that the Grand Ronde may need to be contacted with regards to this PA in the future. Some wording should be included that will allow future tribes to be added without having to redo the whole PA.

My specific review comments regarding PA stipulations are listed below:

<u>Stipulation</u>	<u>Page</u>	<u>Comment</u>
II (A)-2	4	Stipulation states that all potentially affected properties will be evaluated for NR eligibility. Is this a reasonable stipulation given agencies' current funding and staffing? Do you really mean <u>ALL</u> properties or only those that are actually affected?
II (A)-3	4	It is important to realize that site eligibility can change if new information becomes available or a project's level of effect changes. A site determined not eligible can later be reevaluated and found eligible (and vice-a-versa). This section should be written to remain open to the possibility of change.



<u>Stipulation</u>	<u>Page</u>	<u>Comment</u>
II (F)	6	Oregon SHPO believes that no PA should extend for a period of thirty years. Too many changes can occur on the landscape and within an office's staff to make this a viable timeline. Our office rarely signs a PA with a greater duration of 15 years and feels that 20 years should be a maximum time line fitting for this PA.
III (A)	6	The APE should include all mitigation areas that are created or directly impacted by a proposed action under this PA. If wetland/wildlife mitigation areas are created due to damage of existing areas by dam related projects, these areas need to be considered part of the APE. As written I am unsure if such areas are included.
III (C)-2	6	"Principle causative factor"? How does one quantitatively acknowledge and measure such things? This stipulation was in the earlier PA and I still find it difficult to see how the federal agencies intend to address it? Oregon SHPO has had a difficult time discussing this problem with agencies in the Hells Canyon area and would not expect the problem to be resolved any easier here. Serious consideration should be focused on how one is to determine judging "level of cause" and addressing only "the increment of effect caused by their operations."
III (D)	7	Portion of first sentence "due to attenuation, intervening effects, or other factors" should be removed.
IV (B)-3 rd bt.	7	Our office has no problem with the addition of HPRCSIT (Historic Properties of Religious and Cultural Significance to Indian Tribes) to this stipulation, as recommended by CTUIR but we believe that the term TCP should remain due to other ethnic groups within the larger project area (e.g., Chinese, Basque) that may have significant properties needing protection.
IV (B)-12 th bt.	8	I would like to see some discussion (or know where such information will be considered) in the defining of research objectives within the System wide Research Design. This remains an interesting concept but one that hasn't really been addressed. In the earlier PA I asked if such a design was even possible. I see no new information here that will help to flesh out such a possibility.
IV (C)-2 nd bt.	8	Our office concurs that the curation guidelines mentioned in the PA for access and future research potential for artifacts collected under federal projects (whether on federal, non-federal public or private lands) need to remain compatible to 36CFR79.
V- 2 nd sentence	9	TCP's can be associated with other ethnic groups beside Indian Tribes. "And others" should be included at the end of this sentence.
V (C)	9	I know that some discussion has occurred among the Lead Federal Agencies and Tribes over the process or need to determine eligibility for TCP's in a project area. Is eligibility really the main concern here or more what the level of effect on such properties may be and how does one mitigate such an effect. I believe the process of eligibility is more complicated than this stipulation lets on and some rewording is needed to address determining "level of effect" and potential mitigation strategies.

<u>Stipulation</u>	<u>Page</u>	<u>Comment</u>
VI (C)-5	10	Stipulation should include providing a schedule for <u>identifying properties</u> and evaluating all <u>potentially affected</u> unevaluated properties.
VI (C)-6	10	Defining “thresholds” for when a project would trigger a reassessment of Section 106 compliance activities can be difficult and not always possible in a general PA. Such thresholds may be more sites specific. I suggest that some reconsideration of rewording or rethinking this stipulation be done.
VIII (A)	12	I see no direct tie in with the Annual Report, Annual Work Plan , Project Research Design, and System-wide Research Design. These should all be tied closely together, especially for items within the specific project. I believe that most project-specific areas lack a real, well thought out and supported research design and thus completed products (whether testing, evaluation or monitoring reports) remain hanging out there without a direct tie in to a “needs assessment” or an evaluation for future direction. If PA’s (system-wide and project-specific) are going to be drafted than a priority needs to be spent on developing suitable research designs. While mentioned in this PA, no substantial data is provided to see how or in what direction such a PA will focus. A system-wide research design may be more of a concept on paper than is possible to flesh out. If so, what bearing will this have on the umbrella PA?
IX (E)-1	15	Sentence I mentions Stipulation IX.E.3. I think you mean to refer to IX.E.2 here.
X	16	First sentence references a Stipulation IX.E.6. There is no such stipulation (E only has 3 subparts).What does this refer to?
XI (B)-3a	18	Delete this section. The ACHP has stated that they will always weigh in if a dispute arises between federal agencies and objecting parties (as per Tom McCulloch during our recent meeting).
XII (E)	19	This stipulation should only be required in the case of a formal objection. If a consulting party contacts SHPO/THPO staff to discretely discuss a concern or objection to the PA, not all comments or contacts need to be passed on to the Lead Federal Agencies. Such a stipulation would limit the freedom of all parties to discuss freely their feelings regarding a given issue.
XV	20	Our office still wonders how many Tribes will finally agree to sign such an umbrella PA. If most or all Tribes refuse to sign it, what is the value of such a document? Discussions with Tribes at past FCRPS meetings and the time involved by the Lead Federal Agencies in getting to this level of a draft document has shown that there is a major problem with the concept of the “umbrella” PA among tribal peoples.
Attachment 3	30	Area of Jurisdiction: Is “tribal land” actually defined under NHPA?
Attachment 3	31	Federal Land Managing Agency: Need to include the possibility of other federal land managing agencies involvement (e.g., USF&WS, BIA).
Attachment 3	32	A definition for “ National Register of Historic Places ” should be included.
Attachment 3	33	Traditional Cultural Property – First sentence should read a property that <u>may be</u> eligible for inclusion (not is eligible).

<u>Stipulation</u>	<u>Page</u>	<u>Comment</u>
Attachment 4	35	Treatment Plan Principles-1st bullet: Sentence should end with phrase “that are being adversely affected by an undertaking.”
Attachment 4	35	Treatment Plan Principles-5th bullet, last sentence should read “The SHPO would be involved if a TCP <u>is</u> on lands outside of reservation boundaries.” (not was on lands)
Attachment 4	36	Annual Work Plans: Connection to Project-specific Research Design? System-wide research design?
Attachment 5	37	Examples of activities not covered under this PA should include the BPA’s Fish & Wildlife component.
Attachment 6	39	3. Areas of “existing fill” or “where existing ground disturbance is so extensive” needs to be quantified and documented. Currently Oregon SHPO has found that Lead Federal Agencies do not possess an adequate level of documentation to substantiate this inclusion. If such a stipulation is to be included all areas that may be treated under it needs to be initially reviewed and cleared. For example, once adequate documentation is provided to our office and concurrence is reached that an island was totally created from dredge spoils, no further Section 106 review should be needed on such lands.
Attachment 6	39	11. Demolition and removal of buildings less than 50 years of age should involve some level of review before demolition due to possibility of agency tearing down structures rather than protecting them once they turn 50 years of age. Such actions have been known to have occurred in the past under various federal land managing agencies.
Attachment 6	40	12. Activity list should begin with the word “Routine”.
Attachment 6	40	18. Our office has major problems with this activity list. As written an agency could replace a telephone pole with a fiber optic line without review. Telephone poles could be replaced where no previous survey has been conducted. Historic dikes and levees could be removed without documentation. Pipelines could be replaced with larger pipelines that would impact undisturbed soils. The inclusion of “less than 50 years of age” could be used to keep the caveat for replacing dikes and levees but the remaining activities should still require project review due to their potential to adversely affect historic properties that may have not been assessed during initial construction projects. We have no problem with the inclusion of “signs” (as requested by the Corps in an email dated 2-1-2008) here, however, areas should have been surveyed in the past to be sure that the activity is not occurring within a site.
Attachment 6	40	19. Approval of the excavation of small (<6”) bores would only work if the areas had already been surveyed and were found to not be within a known site.
Attachment 6	40	20. If repair, placement and installation can be completed without any ground disturbance, this activity may fit here.
Attachment 6	40	21. Window repair and replacement needs a standard review process. Even though the original windows may not be in a historic structure, there replacement could impact the evaluation of the structure.

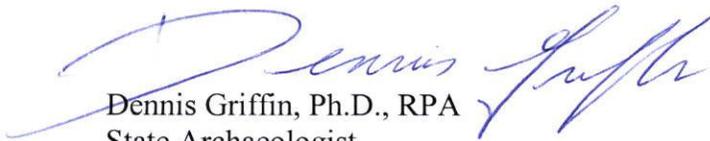
<u>Stipulation</u>	<u>Page</u>	<u>Comment</u>
Attachment 6	40	22. All lands within “existing facilities” have not suffered the same degree of disturbance. This activity is based on knowing the past level of disturbance that has occurred at a property.
Attachment 6	40	24. Remove the word “widening” from the sentence. Define “previously disturbed.” Is this meant to only mean in-kind disturbance?
Attachment 6	40	25. Culverts should be removed from this activity list.

In summary, I find that the PA has some merit and that with the thought that has gone into the latest draft; our office does see a purpose for such a PA. However, our office also feels that it is important that Tribes throughout the Columbia River system also feel that it meets their needs, in regards to what an umbrella PA can offer. I think that we all can agree that the project-specific PA’s will include the heart of discussions and ways of addressing potential impacts to cultural sites. The individual working groups will work with the Lead Federal Agencies, SHPOs and other agencies to draft up the project-specific PA’s, research designs and specifications for identifying, evaluating, mitigating and monitoring affects on known historic properties. These are discussions our office looks forward to participating in.

When last we met you mentioned that the Lead Federal Agencies would attempt to redraft the Attachment 6 list due to our discussions. My comments here are meant to summarize the January draft and I look forward to seeing any later revisions as they are completed.

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

Sincerely,



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

-----Original Message-----

From: Wilmoth, Stan <swilmoth@mt.gov>

To: Celmer, Gail C NWD

Sent: Fri Jun 06 08:14:16 2008

Subject: RE: FCRPS PA Discussions - May 28th

Gail: please find attached comments/questions re: attachment 6 of FCRPS PA. I have not attempted to do anything with the rest of the PA draft since I enter tardy.

Attachment 6-

Introductory paragraph. Decisions on exemptions made by CRS. That is good, but is there a reason to - if it is not done elsewhere - to make sure the CRS meets the SOI standards for appropriate CR? I think in many cases it is a good requirement - engineers could in some agencies serve as CRS. That is usually NOT good. Secondly it states here that decisions will be documented. Where/how? Should there be a short list in the Annual Report? Maybe under A.3.b.?

1) I do not know what #1 means so I would not like to agree with it.

2) I know that many, including the ACHP sometimes, think that this is fine. I have doubts as it stands. If the BLM transfers land to the Army National Guard (which is federal but has no CR staff and no one in the state that meets the SOI standards to be their CRS - it is a potential Adverse Effect. We have such a deal going right now. BLM agrees with me - the ArmyNA does not. But it's going to happen. I don't know - but at a minimum there should be a caveat that the receiving agency has comparable CR program, staff and training, or a PA agreement be part of transfer should be required.

11) How about changing the years from 50 to 45? And to clarify that any exempted additions are also non historic? Again as an example we have WWII and cold war structures that the military is playing games with that these clarifications would be useful to have.

12) Less than 45 years....

19) Does mean inside recorded archaeological sites or features? TCPs? If that is a possibility it needs to be modified.

20) I think SOI standards need to be referenced and a requirement for action to be reversible.

23) The guzzlers I know about are all in the ground. Are there non ground disturbing designs?



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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

May 27, 2008

Kimberley St. Hilaire
Bonneville Power Administration
Attn: KEC-4
P.O. Box 3621
Portland, OR 97208

Dear Ms. St.Hilaire:

Thank you for another opportunity to express our concerns with the Federal Columbia River Power System (FRPS) Programmatic Agreement (PA). We have outlined our concerns as follows and we look forward to a response:

- 1) "Whereas(# 12)" identifies the President's Memorandum on "Government to Government Relations with Native American Tribal Governments" and Executive Order 13175. The tribe understands that all agencies must work within the guidance as established by the executive orders but The Nez Perce Tribe (and possibly others) has guidance on Government to Government Consultation that identifies the process and objectives of consultation aside from the workgroups. Many agencies and their representatives have preconceived notions on what consultation is and too often it doesn't align with the tribes' concept of what it is. It would be good to note in Section II.B (page 5) that the process must be mutually defined to be effective. The consultation policy the Nez Perce Tribe has established will be provided to the agencies.
- 2) There is concern about the emphasis on National Register eligible sites (See page 4, II.A3). Is there to be a formal Determination of Eligibility completed for each site, or is it just the opinion of the researchers and/ or managers? For sites determined not eligible for listing on the NRHP, will they be ignored? Comment 156 suggests that Stipulation IV includes language that sites will be considered eligible until a formal DOE is done (I think the appropriate regulation is Executive Order 11593).
- 3) Clarify "degree of integrity" as it relates to management of properties. (See page 7, Sect IV.Bullet #6). Is there a clearly identifiable point at which a property no longer has integrity? If it is inundated does it still retain integrity? To what degree? Will this be worked out with input from the tribes? Provide a little rationale for how this will be approached.
- 4) Correct Section XV.B (page 20). The text in the second sentence reads "Stand-along" and should be corrected to "Stand-alone."

5) The statement in XVI. E (page 21) reads, "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." This statement is confusing to the reader and should be clarified.

Sincerely,

A handwritten signature in cursive script that reads "Samuel N. Penney".

Samuel N. Penney, Chairman
Nez Perce Tribal Executive Committee



May 12, 2008

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C.L. "Butch" Otter
Governor of Idaho

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

RE: 1/31/2008 Draft Programmatic Agreement for the Section 106 Review of the Operations of Federal Columbia River Power System

Dear Ms. Hilaire:

Thank you for requesting our views on the most recent draft Programmatic Agreement (PA) for Section 106 Review of the operations of the Federal Columbia River Power System. I appreciate meeting with you and the other agency representatives to discuss the agreement. This version is a significant improvement over the last one. Below are our comments on this draft:

Whereas, page 2: As I stated in the meeting, the Coeur d'Alene Tribe should be listed as a THPO.

II.A.3. This stipulation should be reworded to account for the reevaluation of a property over time, as provided for in the regulations: Section 36CFR8004 (2)(c)(1) states that *The passage of time, changing perceptions of significance or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or not eligible.*

III.A.C.2. As with the last draft, we are concerned about the problem of protracted deliberations to determine what increment of effect is attributable to the operations of the Lead Federal Agencies, while erosion or other effects on sites continue.

III.D. The language in this stipulation is confusing and troubling. It would be improved by ending the first sentence after the word "effects."

VII.A.3 The Annual Report should describe accomplishments with reference to the Annual Work Plan. Also, if a regional research design is developed, then the Annual Work Plan should also provide an update on work that contributed to the regional research design.

VII.B. The Annual Work Plan should also attempt to plan work that contributes to the regional research design. As written, these three



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Kimberly St. Hilaire
May 12, 2008
Page 2

documents--the Annual Report, the Annual Work Plan, and the regional research design—are stand alone and have little or no relation to one another. This does not make sense.

XI. During the five year review, a consulting party that did not originally sign the PA should be provided an opportunity to sign.

Signatories: Again, the Coeur d'Alene should be listed as a THPO.

Attachment 3. Area of Jurisdiction: In the last sentence, includes lands within a reservation boundary should be enclosed in parentheses; the regulations do not define tribal trust lands as 'tribal lands.'

Federal Land Managing Agency: This should be reworded to account for new federal land managing agencies in the future, such as the BLM. Now it recognizes four specific federal agencies. Over the life of the PA (30 years), management authority may change. If a finite set of agencies is being listed, should the BIA be listed here?

National Register: The "National Register of Historic Places" should be defined, not just the "National Register."

Traditional Cultural Property: This definition should state that a TCP "may be" eligible. As stated, all TCPs are eligible. As you, TCPs, like other property types, may or may not be eligible for the National Register.

Attachment 4: The last sentence of the fifth bullet down on page 35 should say "...TCP is on lands outside of reservation boundaries" instead of "was outside."

Attachment 6: First, we are pleased that exempted undertakings will still have to be reviewed by agency cultural resource specialists. With that said, we believe that some of the exemptions should be revised or deleted:

1. "Relinquishment of easement..." This exemption should specify that these are easements or non-fee interests where the agency currently has little or no control.

11. "Demolition or removal of buildings or structures..." This exemption should be deleted. We are worried about buildings or structures being demolished purposefully just before they reach the 50 year mark, or the demolition or removal of a building or structure whose eligibility has changed over time from not eligible to eligible. Demolition and removal are drastic steps that should be taken only after full review by the SHPO/THPO.

Kimberly St. Hilaire

May 12, 2008

Page 3

12. "Maintenance, repair, or modification..." This exemption should be reworded to include only "Routine maintenance and repair to the interior or exteriors of existing buildings and structures less than 50 years old."

20. "Repair, replacement, and installation..." Two sentences should be added the end of this exemption: "This exemption does not include window repair or replacement. Work affecting windows will undergo the standard review process."

24. "Maintenance and widening..." Widening should be deleted.

Again, we appreciate all of the agencies' efforts on this PA. If you have any questions, please feel free to contact me at 208-334-3847, ext. 107.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Pengilly".

Susan Pengilly
Deputy SHPO



Confederated Tribes
of the
Umatilla Indian Reservation
Department of Natural Resources
Cultural Resources Protection Program
P.O. Box 638 73239 Confederated Way
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(541) 276-3629 Fax (541) 276-1966



April 10, 2008

Kimberly St. Hilaire
Cultural Resources Program Manager
Environment, Fish and Wildlife, KEC-4
Bonneville Power Administration
Post Office Box 3621
Portland, Oregon 97208-3621

Dear Ms. St. Hilaire:

Thank you for the opportunity to comment on the latest (January 31, 2008) *Systemwide Programmatic Agreement for the Management of Historic Properties affected by the Multipurpose Operations of Fourteen Projects of the Federal Columbia River Power System for Compliance with Section 106 of the National Historic Preservation Act (PA)*. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Cultural Resources Protection Program (CRPP) appreciates that the Bonneville Power Administration, U.S. Army Corps of Engineers, and Bureau of Reclamation (Agencies) took the time to meet with us on March 18 to discuss our concerns about this draft; the CTUIR found the meeting particularly productive. We feel that PA has dramatically improved since the previous draft.

At the March 18 meeting, the CTUIR focused on trying to gain an understanding of how the FCRPS will operate differently under the PA than it currently does. It is our understanding that until the project specific programmatic agreements or historic property management plans are adopted, there will be no real change, with two exceptions. The scope of the PA includes what had previously been separate undertakings, which had followed 36CFR800. We remain curious to see how these projects will be addressed, and whether the changes will be different at different reservoirs. The PA's Attachment 5 is a good effort toward explaining the undertaking, but it is still unclear how consulting parties will understand which compliance system is being followed and who the lead federal agency or agencies will be for a given aspect of the undertaking. We also discussed the exempted activities listed in Attachment 6. The CTUIR has specific problems with a number of the activities in this list; rather than detail our numerous concerns, our recommendation is to develop exempted activities lists in the individual programmatic agreements and not have a list at all in this overall PA.

Another subject discussed at the meeting is how consultation will work if a tribe is not part of a Cooperating Group. The CRPP suggested that the Agencies identify the specific tasks each Cooperating Group is expected to complete and commit to involving each affected tribe in those tasks, whether through a Cooperating Group or some other mechanism. This subject is of critical importance; the CTUIR must be assured that consultation regarding this ongoing undertaking is not limited by the functionality of individual Cooperating Groups.

We appreciate the efforts that Agencies have made to clarify issues surrounding historic properties of religious and cultural significance to Indian Tribes (HPRCSIT). As discussed, we support using this cumbersome term rather than "traditional cultural property" because, as stated in the Advisory Council on

Historic Preservation's draft *Consultation with Indian Tribes in the Section 106 Review Process: Guidelines* (May 2007; emphasis in original),

Within the Section 106 process, the appropriate terminology for sites of concern to tribes is **“historic property of religious and cultural significance to an Indian tribe.”** Unlike the term TCP, this phrase appears in NHPA and the Section 106 regulations. **It applies strictly to tribal sites, unlike the term TCP.** Furthermore, Section 101(d)(6)(A) of NHPA reminds agencies that historic properties of religious and cultural significance to Indian tribes may be eligible for the National Register. Thus, it is not necessary to use the term TCP when considering whether a site with significance to a tribe is eligible for the National Register as part of the Section 106 process. The NPS Bulletin 38 guidelines are helpful, however, in providing an overview of how National Register criteria are applied.

There is another complication involved with the term TCP: Bulletin 38 has sometimes been interpreted as requiring that an Indian tribe demonstrate continual use of a site in order for it to be considered as a TCP. The NHPA and the Section 106 regulations reflect the understanding that tribes have frequently been geographically separated from historic properties of religious and cultural significance to them by no fault of their own, and thus do not carry any requirement to demonstrate continual use.

The CTUIR supports a provision within the PA to assess HPRCSITs thematically, or in groups, rather than evaluating each site individually. We look forward to further discussion regarding the role of the State Historic Preservation Offices (or in some cases Tribal Historic Preservation Offices) in eligibility determinations regarding HPRCSITs when the specific tribe and the Agencies are in agreement. As we noted in the meeting, we are unclear about what expertise a SHPO (or a THPO from another tribe) would add to the discussion of eligibility for HPRCSITs when the tribe and Agencies are in agreement.

At the meeting, we had considerable discussion about the rights of Tribes who do not sign the PA. This began as a discussion of the use of the terms “signatory parties” and “consulting parties.” It is the CTUIR’s position that affected tribes, signatory or not, must be consulted with regarding any amendment to the PA. Since the PA is basically a re-write of the regulations implementing the National Historic Preservation Act, changes to the alternative regulations are undoubtedly an undertaking with the potential to affect historic properties to which tribes attach religious and cultural significance. The PA’s termination clause recognizes a role for all of the consulting parties. We recommend ensuring that consulting parties are afforded appropriate rights under this agreement.

As we have discussed throughout the development of this PA, it is difficult to understand it in the context of 36CFR800 because rather than achieving the goals of the alternative procedures laid out in 36CFR800.14, this document outlines a plan for developing alternative procedures on the project level in the future. This becomes particularly problematic with the statement on page 3, “Now, therefore, pursuant to 36CFR800.14(b), the Lead Federal Agencies shall take into account the effects of the undertaking on historic properties in accordance with the following stipulations, and 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.” We understand that this terminology is present in most PAs developed under 36CFR800.14, but from the CTUIR’s point of view, the Agencies cannot claim to have satisfied their Section 106 responsibilities until all of the individual project specific PAs have been completed; until that time the Agencies must follow the process laid out in 36CFR800. Execution of this PA is merely evidence of a step toward satisfying the Agencies’ responsibilities.

The CTUIR expressed disappointment at the meeting that the Agencies had not addressed most of the language we recommended adding to the PA in our previous comments. As we stated then, the CTUIR

hoped the PA would “reflect a spirit of cooperation between the Agencies and Tribes. Such a cooperatively prepared document would be more similar to the Missouri River programmatic agreement in terms of tone and content.” We suggested the addition of a number of Whereases taken from Agency policies (see Attachment 1; we still recommend adding them). As an example we mentioned the Agencies’ response to the whereas regarding trust responsibility.

The suggested language from the CTUIR (comment 136) was to add:

Whereas the Federal Government has a trust responsibility to Indian Tribes, which includes the duty to act ‘with good faith and utter loyalty to the best interests of the Indians’. The Lead Federal Agencies will act in accordance with the Federal trust responsibility, including government-to-government consultation whenever the Lead Federal Agencies’ ‘plans or actions affect trust resources, trust assets, or Tribal health and safety’. The Lead Federal Agencies will treat sacred and culturally significant places as subject to the Federal trust responsibility and therefore Tribes must be engaged in consultation before decisions are made, and Tribes expect to participate in making decisions and in carrying out decisions regarding these resources.

This language was taken from different portions of the Missouri River programmatic agreement. The Agencies’ response to this comment was that this Whereas would not be included because:

The Systemwide PA addresses NHPA Section 106 responsibilities, and therefore does not affect Federal trust responsibilities to tribes. Whereas #12 affirms the government-to-government relationship between tribes and the Federal government, and the Lead Federal Agencies intend to enter into government-to-government consultation when appropriate. Whereas #10 references Agency tribal policies, and acknowledges that the undertaking affects historic properties with traditional religious and cultural importance to tribes.

In our meeting, the Agencies suggested they do not have a trust responsibility to protect cultural resources because they are not trust assets. The following are the lead agencies’ policies on trust resources and trust responsibility.

Bureau of Reclamation, <http://www.usbr.gov/native/naao/policies/policy.html>

Trust Resources: The United States government has an Indian trust responsibility to protect and maintain rights reserved by or granted to Indian Tribes or Indian individuals by treaties, statutes, and executive orders. Reclamation, as a federal executive agency, shares this responsibility.

Corps of Engineers, <http://www.usace.army.mil/cw/cecw-p/pgls/pgl57a.pdf>

TRUST RESPONSIBILITY - The U.S. Army Corps of Engineers will work to meet trust obligations, protect trust resources, and obtain Tribal views of trust and treaty responsibilities or actions related to the Corps, in accordance with provisions of treaties, laws and Executive Orders as well as principles lodged in the Constitution of the United States.

Bonneville Power Administration, <http://www.bpa.gov/Corporate/KT/Trblpolicy.pdf>

I. BPA recognizes that a trust responsibility derives from the historical relationship between the Federal government and the Tribes as expressed in Treaties, statutes, Executive Orders, and Federal Indian case law. Using these legal underpinnings, BPA and the Tribes will work cooperatively to arrive at an understanding of how the trust responsibility applies to a government-to-government relationship.

The Bureau of Reclamation policy recognizes that the trust responsibility extends to protect rights of tribes granted by statute. The Corps of Engineers policy does not define trust resources, but acknowledges an obligation to obtain tribal views on trust responsibilities in accordance with the laws of the United States. The Bonneville Power Administration policy acknowledges that some of the trust responsibility’s foundation is in statutes. These three policies are consistent on the point that statutory

rights granted to tribes are relevant to the trust responsibility. Trust resources can be secured by treaty or by statute; the trust responsibility remains the same.

The Agencies' response to comment 136 and statements in our meeting entirely miss the point that the United States owes tribes the trust responsibility to care for rights and resources in their control which are subject to tribal rights under treaty or statute. Perhaps the underlying disagreement is a confusion regarding the foundations of the United States trust responsibility to tribes. In only the narrowest sense does this area of law overlap with the Law of Trusts. The trust resources at issue (cultural resources) may or may not be trust assets, but this does not affect the statutory obligations of the federal agencies with regards to the tribes. For instance, the Bureau of Reclamation has defined trust assets as follows:

Indian Trust Assets (ITAs) are legal interests in property held in trust by the United States for Indian Tribes or individuals. The Secretary of the Interior, acting as the trustee, holds many assets in trust. Examples of objects that may be trust assets are lands, minerals, hunting and fishing rights, and water rights. While most ITAs are on reservations, they may also be found off-reservations. The United States has an Indian trust responsibility to protect and maintain rights reserved by or granted to Indian Tribes or Indian individuals by treaties, statutes, and executive orders. These are sometimes further interpreted through court decisions and regulations.^{1[1]}

This acknowledges that trust responsibility includes those rights protected by statute, in addition to those reserved by treaty. There is no debate that tribes have rights to be consulted under the National Historic Preservation Act, the Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act. These tribal rights are explicitly enumerated in those statutes and regulations; the United States has an obligation to manage cultural resources in consultation with Indian tribes. The acknowledgement that the United States has a trust responsibility to manage these resources does not expand or contract any existing legal obligation the agencies already have.

The action agencies should, at the very least, rewrite the 10th Whereas to state:

Whereas the Federal Government has a trust responsibility to Indian Tribes, the Lead Federal Agencies will act in accordance with that responsibility, including government-to-government consultation whenever the Lead Federal Agencies' plans or actions affect trust resources or trust assets. The Lead Federal Agencies will treat historic properties of religious and cultural significance to Indian Tribes as subject to the Federal trust responsibility and therefore Tribes must be engaged in consultation before decisions are made, and Tribes expect to participate in making decisions and in carrying out decisions regarding these resources.

In terms of specific changes, the CRPP recommends the following.

- Add the Bureau of Reclamation's policy to Whereas 10 (<http://www.usbr.gov/native/naao/policies/policy.html>)
- Remove Stipulation III(C).
- Please clarify what is meant by the text I have italicized in Stipulation III(D): "The APE may be discontinuous or interrupted, excluding geographic areas where the undertaking does not cause effects due to *attenuation, intervening effects, or other factors.*"
- We do not agree with the Bureau of Reclamation's insistence on the sentence in Stipulation IV(C) "Access terms for evaluation or treatment shall be sufficient to ensure that any materials collected will be permanently curated under conditions that allow for appropriate care, use, and access." We do not deny that such terms are appropriate in some cases; they may not be appropriate in all cases. Decisions about individual situations should be made on a case by case basis by the consulting parties; this overarching PA should not place an absolute prohibition on all excavation without provisions for permanent curation.

^{1[1]} http://www.usbr.gov/mp/cao/field_offices/new_melones/RMP/RIR/5.0-Indian_Trust_Assets.pdf

- Add the word “cultural” in Stipulation VII(B) so that it reads, “The Systemwide Research Design would be developed to encourage consideration at the Project level of research, cultural, and educational objectives that have application on a broader, potentially regional level.”
- Add “context statements” to Stipulation VII(B)(1).
- The first sentence of Stipulation X is confusing.
- Stipulation XII describes the dispute resolution process. For signatory parties, the ACHP may determine not to consider the dispute “in which case the Agencies may proceed with the proposed action.” Under this PA, we are not clear what the proposed action is or under what circumstances the Agencies would not proceed with it.
- Attachment 4, Treatment Plan Principles. Add “that are being adversely affected by the undertaking” to the first bullet.
- Attachment 4, Treatment Plan Principles. Remove “The SHPO would be involved if a TCP was on lands outside of reservation boundaries” from the fifth bullet.
- Attachment 4, Treatment Plan Principles, sixth bullet. Remove the fourth sentence, as it is understood that the mitigation option is tied to the National Register criteria and it is up to the consulting parties to consider the feasibility and cost on a case by case basis. Also remove “consistent with Agency authorities” from the fifth sentence as nothing can be done under this PA that is not consistent with Agency authorities.

Thank you again for soliciting our comments regarding this document. If the Agencies have any questions about our comments, please feel free to contact me, Shawn Steinmetz, or Catherine Dickson at (541) 276-3629 or tearafarrow@ctuir.com, shawnsteinmetz@ctuir.com, or catherinedickson@ctuir.com.

Respectfully,



Teara Farrow
Program Manager

cc: Johnson Meninick, Yakama Nation
 Vera Sonneck, Nez Perce Tribe
 Camille Pleasants, Confederated Colville Tribes
 Sally Bird, Confederated Tribes of Warm Springs Reservation of Oregon
 Marcia Pablo, Confederated Salish and Kootenai Tribes of the Flathead Reservation
 Kevin Lyons, Kalispel Tribe of Indians
 Randy Abrahamson, Spokane Tribe of Indians
 Jill Wagner, Coeur d'Alene Tribe
 Josephine Shottanana, Kootenai Tribe of Idaho
 Rex Buck, Wanapum Band
 Chuck James, BIA
 Ken Johnston, BPA
 Jamae Hilliard Creecy, BPA
 Rebekah S. Pettinger, BPA
 Lynne MacDonald, Bureau of Reclamation
 Jill Lawrence, Bureau of Reclamation
 Gail Celmer, Corps of Engineers
 Joel Ames, Corps of Engineers
 G. Paul Cloutier, Corps of Engineers
 Rob Whitlam, Washington Department of Archaeology and Historic Preservation
 Dennis Griffin, Oregon State Historic Preservation Office
 Stan Wilmoth, Montana State Historic Preservation Office
 Suzie Neitzel, Idaho State Historic Preservation Office
 Tom McCulloch, ACHP

Attachment 1: Recommended Language to Add to the PA

Whereas the impacts of system operations could eventually destroy a large percentage of the cultural resources within the APE; the cumulative effect would be the loss of heritage sites and traditional cultural resources from a river system in an entire region.

Whereas the Lead Federal Agencies have committed to implement, in full cooperation with affected Tribes and agencies, agreements, plans, and actions for management of the impacts to cultural resources. Individual Tribes' desired approach and preferred methods for cultural resources management will be a major consideration in the development, as well as the implementation, of each of the long-term management plans.

Whereas it is the policy of the Lead Federal Agencies to preserve, protect, and manage significant archaeological, historical, and traditional cultural properties within the APE in accordance with the NHPA and other applicable statutes, executive orders, and regulations.

Whereas it is the policy of the Lead Federal Agencies to uphold the terms of treaties between the United States and Indian Tribes, and executive orders regarding Indian Tribes.

Whereas the Lead Federal Agencies are required by Section 101(d)(6) of the NHPA to consult with any Indian Tribe that attaches religious and cultural significance to historic properties that may be affected by undertakings as defined in the NHPA.

Whereas the Federal Government has a trust responsibility to Indian Tribes, which includes the duty to act 'with good faith and utter loyalty to the best interests of the Indians'. The Lead Federal Agencies will act in accordance with the Federal trust responsibility, including government-to-government consultation whenever the Lead Federal Agencies' 'plans or actions affect trust resources, trust assets, or Tribal health and safety'. The Lead Federal Agencies will treat sacred and culturally significant places as subject to the Federal trust responsibility and therefore Tribes must be engaged in consultation before decisions are made, and Tribes expect to participate in making decisions and in carrying out decisions regarding these resources.

Whereas this PA is designed to facilitate the development of processes and strategies to minimize, avoid, or mitigate the ongoing adverse impacts the operation of the FCRPS caused.

Whereas this PA seeks to create a shared stewardship document that will ensure that sacred and cultural places are regarded and understood from various, including Tribal, viewpoints, and that Tribal values and customs (not just archaeological values and customs) are applied to the protection of these places. Until now, archaeological values have been dominant over Tribal values, and archaeological values have contributed to the destruction of sacred places.

Whereas this PA's fundamental value is respect: respect for the rivers; the sacred and cultural places; Tribal values, culture, and beliefs; Tribal people and their contribution to the history and environment of the Columbia River system; for the sacrifices Tribal people have made so that newcomers can have flood control, irrigated crops, navigation, electricity, and recreational activities. When Tribal representatives talk about Tribes' cultures, needs, and issues, they will be taken as seriously as archaeologists are when they talk about Tribes' ancestors, culture, and interests.



The Confederated Tribes of the Colville Reservation
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March 28, 2008

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

Re: Draft FCRPS Systemwide PA Comments.

Dear Tribal Affairs Officer:

Thank you for this opportunity to review and comment on the January 31, 2008 draft of the Systemwide Programmatic Agreement for cultural resource management in the Federal Columbia River Power System. Substantial and positive changes have been made since the last draft. We appreciate the effort required to prepare this document and respond to and incorporate all of the comments from the previous draft. This latest draft is vastly improved over earlier versions and most of our earlier comments have been addressed. However, one key issue that we repeatedly bring up remains – decision making authority

While removed from the rest of the document, the federal agencies specifically invoke or imply federal agency decision making authority, as follows:

“IX. CONSULTATION, COMMUNICATION, AND COORDINATION”

“While the Lead Federal Agencies retain final decision making authority for all their actions relating to the undertaking, communication, coordination, and consultation are 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:”

The records of decision from the System Operation Review and the agencies’ Native American policies mandate a cooperative process for cultural resource management. Please be reminded, again, the implementing regulations for section 106 confer responsibility for “compliance”, not “decision making authority”. 36 CFR Part 800.2(a) is reproduced below with pertinent portions highlighted. It also clearly states that while the agency is responsible for findings and determinations, findings and determinations can use designees to prepare information, analyses and recommendations. Such designees would be the Working Groups.

§ 800.2 Participants in the Section 106 process.

(a) *Agency official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the proposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in

the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

...

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

(4) *Consultation.* The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process.

One reason this is an important point is because, after 12 years of negotiation and discussion, the agencies are still unwilling to commit, in writing, to co-management and cooperative decision making. This is reflected in the section on "PA participants ... clear, agreed upon roles and responsibilities":

"IX. CONSULTATION, COMMUNICATION, AND COORDINATION

...

"C. Cooperating Group Responsibilities.

A decision by the Lead Federal Agencies to proceed when the Cooperating Group is unable to provide input in a timely or agreed upon manner is not a violation of this PA."

This leaves open the possibility of agencies moving forward with their own agenda if they have forced the other group members from the table. Consultation rights are not abdicated by tribes if they do not sit at the table, it means the agency or agencies must find another mechanism for consulting at the technical and management levels, or resolve working group difficulties to be in compliance with agency policy and the SOR RODs. Law still requires government to government consultation prior to agency action.

This ability for "Agencies to proceed" also leaves open the possibility of agencies moving forward with their own agenda when the rest of the working group members have reached consensus, or are in unanimous agreement, but the agency does not agree. These are not remote possibilities; the Confederated Tribes of the Colville Reservation already encountered two agencies engaging in the unilateral actions describe in this and the preceding paragraph.

Moving away from the body of the PA, the two categorical exclusions below, #s 18 and 25, are problematic because it presumes significant resources don't exist just because of previous disturbance. For instance, a culvert or fiber optic line might transect an unrecorded significant site. Section 106 would require we identify the property prior to evaluating integrity, so the fact a site is disturbed does not mean it doesn't have to be recorded. And, while the exact footprint of the previous disturbance might not adversely impact an undisturbed portion of a significant property, when does anyone really stay in the exact same footprint?

"18. Excavations for removing or replacing tile, ditches, fire lines, dikes, levees, pipes, pipelines, cables, power poles, telephone lines, fiber optic lines, gates, and cattle guards, where no such excavations, including heavy equipment operation, would take place outside of the original zone of disturbance."

"25. Maintenance within existing road or parking lot profiles, such as repaving, grading, cleaning inboard ditches, repairing, brushing or replacing culverts, guards, and gates within existing disturbed areas."

Thank you for your time and commitment to working cooperatively toward the preservation and perpetuation of significant cultural resources. Should you have questions concerning our comments, please contact Camille Pleasants, our Tribal Historic Preservation Officer, at (509) 634-2695.

Sincerely,



Mike Marchand
Chairman, Colville Business Council

cc: Deb Louie -- CBC Culture Committee Chair
Dan Brudevold -- Land and Planning Director
Camille Pleasants -- Tribal Historic Preservation Officer
Gus Moura -- TCP Coordinator
John Pouley -- Field Director
310908 Correspondence File
Chrono

From: Wernham, Richard T NWS [mailto:Richard.T.Wernham@usace.army.mil]
Sent: Friday, February 01, 2008 9:19 AM
To: St Hilaire, Kimberly R - KEC-4
Cc: Brengle, Craig S NWS; Celmer, Gail C NWD; Grant, David M NWS; Salo, Lawr V NWS; Beauregard, Laura M NWS
Subject: FCRPS Systemwide Programmatic Agreement - Draft dated 1/31/08 - Comment

I would like to see some additional wording added to a number of the listed activities in attachment 6, "Routine FCRPS Activities For This Undertaking That Do Not Require Section 106 Consultation".

Installation of signs are mentioned for buildings or structures in #16 but, are not included for roads, parking lots, in park areas, facility grounds and trails. I would suggest the following be added to the numbered exceptions:

18. Add the word "*signs*" to the list of activities.

24. Add to the end of the sentence, "*and associated signage.*"

25. Insert the following wording, "*signing and sign maintenance*" between brushing and or in the second line.

Thank you for allowing me to comment on the draft Programmatic Agreement.

Richard T. Wernham
Supervisory Natural Resource Manager
Libby Dam Project, COE