

ATTACHMENT 5

Programmatic Agreement on Cultural Resources

PROGRAMMATIC AGREEMENT AMONG

THE BUREAU OF RECLAMATION, THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION, THE NATIONAL PARK SERVICE,
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER, HAVASUPAI
TRIBE, HOPI TRIBE, HUALAPAI TRIBE, KAIBAB PAIUTE TRIBE, NAVAJO NATION, SAN
JUAN SOUTHERN PAIUTE TRIBE, SHIVWITS PAIUTE TRIBE AND ZUNI PUEBLO
REGARDING
OPERATIONS OF THE GLEN CANYON DAM

WHEREAS, the Secretary of Interior has directed the preparation of an Environmental Impact Statement (EIS) on the effects of the operation of the Glen Canyon Dam on the downstream environmental and ecological resources, and historic properties of Glen Canyon and Grand Canyon; and

WHEREAS, the Grand Canyon Protection Act of 1992 (PL 102-575 Title XVIII) mandates the continued monitoring and management of resources located within the area of impact covered by this agreement and requires completion of the EIS by October 1994; and

WHEREAS, the purpose of the EIS is to ". . . reevaluate the operation of the Glen Canyon Dam to determine specific options that could be implemented to minimize - consistent with law - adverse impacts on the downstream environmental and cultural resources and Native American interests in Glen and Grand Canyons." (Interim Preliminary Draft EIS 7/92); and

WHEREAS, the Bureau of Reclamation (Reclamation), Upper Colorado Regional Office, administers the releases of water from the Glen Canyon Dam and has determined that the operation of the Dam (the Program) may have effects upon properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (Council), the National Park Service (NPS), and the Arizona State Historic Preservation Officer (SHPO) pursuant to 36 CFR § 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (ACT) (16 U.S.C. 470f); and

WHEREAS, Reclamation is the lead Federal agency for the Program for purposes of Section 106; and

WHEREAS, the NPS is responsible for the administration and management of historic properties within the boundaries of the Glen Canyon National Recreation Area and the Grand Canyon National Park pursuant to Section 110 of the Act; and

WHEREAS, given their mutual responsibilities, Reclamation and the NPS have determined to coordinate their respective roles in the management and consideration of historic properties which may be affected by the Program; and

WHEREAS, the Hualapai Tribe is responsible for the administration and management of historic properties within the boundaries of its reservation lands affected by the Program; and WHEREAS, prior to performing any work required under the terms of this Agreement within the boundaries of the Hualapai Indian Reservation, Reclamation or the NPS shall notify the Hualapai Tribe of such work and obtain appropriate Tribal permits before entering the boundaries of the Hualapai Indian Reservation. The Tribe will require that a Hualapai Tribe member monitor be present when necessary for any culturally sensitive work, as determined by the Tribe.

WHEREAS, the Navajo Nation is responsible for the administration and management of historic properties within the boundaries of the Navajo Nation pursuant to the Cultural Resources Protection Act (CMY-19-88); and

WHEREAS, the Navajo Nation agrees to NPS administration and management of any Navajo Nation historic properties which may be included under the terms of this agreement until such time as the Navajo Nation assumes such responsibility; and

WHEREAS, the Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Kaibab Paiute Tribe, Navajo Nation, San Juan Southern Paiute Tribe, Shivwits Paiute Tribe and the Zuni Pueblo (the Tribes) participated in consultation and are signatories to this Programmatic Agreement;

NOW, THEREFORE, Reclamation, the Council, NPS, SHPO, and the Tribes agree that the Program shall be administered in accordance with the following stipulations to satisfy Reclamation's Section 106 responsibilities for all individual aspects of the Program.

Stipulations

Reclamation, as lead Federal agency for purposes of the Program, shall ensure that the following stipulations are carried out.

1. IDENTIFICATION AND EVALUATION

a. The NPS has identified a total of 313 contributing properties, referred to as the Grand Canyon River Corridor District (District), within the Area of Potential Effects (APE). Nine additional properties within the boundaries of the District remain unevaluated. The NPS shall assist Reclamation in obtaining the necessary information to complete the evaluation of these nine sites for determining their eligibility for listing on the National Register as contributing properties to the District or as eligible on their own merits. Reclamation shall submit such evaluations to the SHPO for determinations of eligibility. In the event that Reclamation and SHPO do not agree on the eligibility of any property, or if the Council or Keeper so request, Reclamation shall obtain a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR § 800.4(c). Determinations of eligibility for the remaining nine properties shall be completed by August 1993.

b. Reclamation and the NPS, in consultation with SHPO, shall identify and evaluate historic properties in the remaining 37 miles of the APE not previously intensively inventoried (Attachment A). Properties identified within the 37 mile corridor shall be evaluated on their own merits and as contributing elements to the District pursuant to 36 CFR § 800.4(c). An intensive inventory of the entire APE shall be completed by August 1993. Ongoing identification and evaluation efforts shall be a part of the management program identified at Stipulations 2 and 3.

c. In consultation with the Tribes and SHPO, Reclamation and the NPS shall identify and evaluate properties within the APE which retain traditional cultural values. Such properties shall be evaluated under criteria A, B, C, and D of the National Register Criteria pursuant to 36 CFR Part 60, and taking into consideration "National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties".

(1) Traditional Cultural Properties shall be identified by Reclamation and the NPS through the conduct of ethnographic studies. Ethnographic studies shall solicit and include the participation of and consultation with the Tribes to collaborate in the identification and evaluation of traditional cultural properties.

(2) Reclamation shall submit such evaluations to the SHPO for determinations of eligibility. In the event that Reclamation and SHPO do not agree on the eligibility of any property, or if the Council or Keeper so request, Reclamation shall obtain a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR § 800.4(c). Such study and evaluations shall be completed by October 1994.

2. MONITORING AND REMEDIAL ACTION

a. Within three months of the execution of this Programmatic Agreement, Reclamation and the NPS, in consultation with the SHPO and Tribes, shall develop a Plan for monitoring the effects of the Glen Canyon Dam operations on historic properties within the APE and for carrying out remedial actions to address the effects of ongoing damage to historic properties. The purpose of the Monitoring and Remedial Action Plan shall be to generate data regarding the effects of Dam operations on historic properties, identify ongoing impacts to historic properties within the APE, and develop and implement remedial measures for treating historic properties subject to damage. Such data shall be incorporated into Reclamation's Long-Term Operating and Monitoring Plans governing dam releases identified in the EIS. The EIS is scheduled for completion in October 1994.

b. The Monitoring and Remedial Action Plan (Plan) shall provide for the identification and evaluation of previously unrecorded properties overlooked by previous surveys or exposed subsequent to the surveys, and include measures by which any adverse effects identified during the monitoring effort shall be avoided or minimized. Remedial measures shall be implemented to mitigate ongoing adverse effects and may include, but not be limited necessarily to, bank stabilization, check dam construction and data recovery, as appropriate. The Plan shall specify an expedited consultation process among the parties to this agreement to accommodate situations requiring remedial actions.

c. Reclamation shall submit a draft of the Plan to the parties in this agreement for review and comment. Each party shall have 60 days from receipt of the Plan to comment. Reclamation may assume the concurrence of any party which does not issue comments within 60 days of their receipt of the Plan.

(1) Reclamation shall take into consideration all comments received in their development of a final draft Plan, and submit the final draft Plan to the reviewing parties for a second review opportunity. Each reviewing party shall have 20 days from receipt to review the final draft Plan and issue comments to Reclamation.

(2) If any reviewing party objects to the adequacy of the final draft Plan, Reclamation shall consult with the objecting party, and the other parties to this Programmatic Agreement as necessary to resolve the objection pursuant to Stipulation.

(3) When all objections are resolved, Reclamation shall implement the Monitoring and Remedial Action Plan.

3. MANAGEMENT

a. Reclamation and the NPS shall incorporate the results of the identification, evaluation, and monitoring and remedial action efforts into a Historic Preservation Plan (HPP) for the long-term management of the Grand Canyon River Corridor District and any other historic properties within the APE. The HPP shall be developed in consultation with the parties to this Programmatic Agreement. The HPP shall integrate Reclamation's lead agency role pursuant to Section 106 of the Act and the NPS's stewardship role pursuant to Section 110 of the Act. Specifically, the HPP shall provide management direction responsive to the NPS's responsibilities under Sections 110(a)(1) and 110(a)(2); and NPS's and Reclamation's responsibilities under Sections 110(b) and 110(d).

b. The HPP shall establish consultation and coordination procedures, long term monitoring and mitigation strategies, management mechanisms and goals for long term management of historic properties within the APE.

c. Reclamation and the NPS shall submit a draft of the HPP to the parties to this agreement for 60 days review. The parties to this agreement shall have 60 days from receipt to issue comments to Reclamation and the NPS regarding the adequacy of the HPP. Reclamation and the NPS may assume the concurrence of any party which does not issue comments within 60 days of receipt of the HPP.

(1) Reclamation and the NPS shall take into consideration all comments received in their development of a final draft HPP, and submit the final draft HPP to the reviewing parties for a second review opportunity. Each reviewing party shall have 30 days from receipt to review the final draft HPP and issue comments to Reclamation and the NPS.

(2) If any reviewing party objects to the adequacy of the final draft HPP, Reclamation and the NPS shall consult with the objecting party, and the other parties to this agreement as necessary to resolve the objection pursuant to Stipulation 4. When all objections have been resolved, Reclamation and the NPS shall implement the HPP.

d. The development, and review of the HPP shall be completed prior to the issuance of a Record of Decision for the GCD-EIS, or December 1994, whichever comes first. Upon issuance of a Record of Decision, the HPP shall be reviewed by the parties to this agreement and revised, if necessary, based on the decision. The review of a revised HPP shall be conducted in accordance with the procedures of Stipulation 3.C.1. and 2.

4. DISPUTE RESOLUTION

a. Should any party to this agreement object within 30 days to any plans, specifications, or actions proposed pursuant to this agreement, Reclamation and the NPS shall consult with the objecting party to resolve the objection. If any party involved in the dispute determines that the dispute cannot be resolved, Reclamation shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:

(1) Provide Reclamation and the NPS with recommendations, which Reclamation will take into account in reaching a final decision regarding the dispute; or

(2) Notify Reclamation and the NPS that it will comment pursuant to 36 CFR § 800.6(c)(2) with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; Reclamation's responsibility to carry out all actions under this agreement that are not the subjects of the dispute shall remain unchanged.

b. At any time during implementation of the measures stipulated in this agreement should an objection to any such measure or its manner of implementation be raised by a member of the public, Reclamation and the NPS shall take the objection into account and consult as needed with the objecting party, SHPO, the Tribes, or the Council to resolve the objection.

5. REVIEW OF THE AGREEMENT

a. The Council, SHPO, NPS and Tribes may review activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested. Reclamation will cooperate with the Council, SHPO, NPS and Tribes in carrying out their reviewing activities.

b. Reclamation and the NPS shall cooperatively provide bi-annual summary reports of their progress toward completing the terms of this agreement to each of the parties to this agreement. The biannual reports shall identify accomplishments and actions completed and provide schedules for completion of all remaining tasks. The first biannual report shall be submitted to the parties of this agreement six (6) months after the date of the Council's signature on this agreement and every six months thereafter until the HPP has been implemented.

c. A yearly meeting will be held among the signatories to review the agreement and the results of the monitoring and remedial actions.

6. AMENDMENT

Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR § 800.13 to consider such amendment.

7. TERMINATION

Any party to this Programmatic Agreement may terminate this agreement by providing 30 days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, Reclamation will comply with 36 CFR §§ 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

8. FAILURE TO CARRY OUT TERMS

In the event Reclamation and the NPS do not carry out the terms of this Programmatic Agreement, Reclamation will comply with 36 CFR §§ 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

Execution and implementation of this Programmatic Agreement evidences that Reclamation has afforded the Council a reasonable opportunity to comment on the Program and that Reclamation has taken into account the effects of the Program on historic properties.

At press time, signatures were not available.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: _____ Date: _____

Title: _____

BUREAU OF RECLAMATION

BY: _____ Date: _____

Title: _____

ARIZONA STATE HISTORIC PRESERVATION OFFICER

BY: _____ Date: _____

Title: _____

NATIONAL PARK SERVICE, WESTERN REGION

BY: _____ DATE: _____

Title: _____

NATIONAL PARK SERVICE, ROCKY MOUNTAIN REGION

BY: _____ DATE: _____

Title: _____

HAVASUPAI TRIBE

BY: _____ Date: _____

Title: _____

HOPI TRIBE

BY: _____ Date: _____

Title: _____

HUALAPAI TRIBE

BY: _____ Date: _____

Title: _____

KAIBAB PAIUTE TRIBE

BY: _____ Date: _____

Title: _____

NAVAJO NATION

BY: _____ Date: _____

Title: _____

SAN JUAN SOUTHERN PAIUTE TRIBE

BY: _____ Date: _____

Title: _____

SHIVWITS PAIUTE TRIBE

BY: _____ Date: _____

Title: _____

ZUNI PUEBLO

BY: _____ Date: _____

Title: _____