

THE INTEGRATION OF THE GLEN CANYON DAM PROGRAMMATIC AGREEMENT
WITH THE ADAPTIVE MANAGEMENT PROGRAM
A DISCUSSION PAPER

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INTRODUCTION

The monitoring and cultural research program administered by the Grand Canyon Monitoring and Research Center and the historic compliance program administered by the Bureau of Reclamation and defined within *Programmatic Agreement Regarding the Operations of Glen Canyon Dam (GCDPA)* are two complementary programs that are running on separate planning and scheduling tracks. The scientific information generated from these two respective programs have the potential to provide beneficial data that are complementary to each of these programs. Therefore, at the most basic level, it is important that planning for these two programs be integrated to prevent duplication of effort, both scientifically and logistically, and maximize the shared information potential.

The purpose of this discussion paper is to present a proposed process and schedule for integrating the requirements of the GCDPA program with the Grand Canyon Monitoring and Research Center's cultural resource program planning process. This discussion paper can also serve as a beginning point for further refining this integration process.

LEGAL ASPECTS OF A PROGRAMMATIC AGREEMENT

Section 106 of the National Historic Preservation Act (NHPA) directs Federal agencies to take into account the effects of their undertakings on historic properties that are considered eligible to the *National Register of Historic Places*. It also directs agencies to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. The ACHP has issued regulations, 36 CFR Part 800, to guide agencies in implementing Section 106.

These regulations provide for consultation among responsible agencies, the State Historic Preservation Officer (SHPO), Tribes, other legitimate interested persons, and the ACHP. This consultation is aimed at reaching agreement on ways to avoid or reduce adverse effects on historic properties. During the development of the GCDPA, open meetings were held, and the public was invited to participate in the process through Federal Register notification.

In some cases, consultation may occur with respect to a whole agency program (e.g., operation of Glen Canyon Dam), rather than with respect to a particular project, and result in agreement on procedures that the agency will use, with respect to the program, to ensure that adverse effects are avoided or mitigated. Such procedures are set forth in a Programmatic Agreement (PA) which are executed under 36 CFR § 800.13 and are prepared in final form by the ACHP. Execution and implementation of a PA evidences a Federal agency's fulfillment of its responsibilities under Section 106. However, failure to implement the terms of a PA evidences that the agency's Section 106 responsibilities have not been fulfilled and requires that the responsible agency comply with the regulations on a case-by-case basis with respect to individual historic properties and undertakings that would otherwise be covered by the PA [36 CFR § 800.13(g)].

THE PROGRAMMATIC AGREEMENT REGARDING THE OPERATIONS OF GLEN CANYON DAM

The *Programmatic Agreement Regarding the Operations of Glen Canyon Dam* was officially put into effect on 08 February 1994. The basis for this agreement document is the recognition by the Bureau of Reclamation, Upper Colorado Regional Office, that the operation of the Glen Canyon Dam may have effects on properties included in or eligible for inclusion in the *National Register of Historic Places*.

There are three (3) major stipulations identified in the GCDPA pertaining to the treatment of historic properties. Stipulation I recognizes that there are at least a total of 326 identified *National Register* eligible properties within the Area of Potential Effect (APE), referred to as the Grand Canyon River Corridor District. Within this group, approximately 266 sites are situated on sediment deposits that are subject to erosion as a result of dam operations.

Stipulation I also recognized the responsibility of BOR and NPS to identify and evaluate properties within the APE which retain traditional cultural value. This effort was accomplished through individual tribal ethnographic studies. BOR is required to submit the evaluation of the identified traditional cultural properties to the Arizona State Historic Preservation Officer (AZSHPO) for determination of eligibility. At this time, the consultation with the AZSHPO regarding the eligibility of identified traditional cultural properties is still pending.

Stipulation II recognizes the need to develop a Monitoring and Remedial Action Plan for the purpose of monitoring the effects of the Glen Canyon Dam operations on historic properties within the APE and for developing and implementing remedial actions to address the effects of ongoing damage to historic properties. Data generated from the monitoring and remedial actions are to be incorporated into the BOR's Long-Term Operating and Monitoring Plans governing dam releases. The Monitoring and Remedial Action Plan has been in effect since August of 1994 with the monitoring of archaeological sites being primarily carried out by the National Park Service. The results of monitoring and remedial actions are communicated to the BOR and other consulting parties to the PA through trip reports and annual reports produced by the NPS with information and other input provided by the Tribes when appropriate. On the basis of the information provide in these reports, the next fiscal year's remedial activities are planned and concurrence sought from the consulting parties. This process occurs in August to September. The final decision regarding the necessary level of compliance monitoring and remedial actions and their associated costs for the next fiscal year is ultimately made by the BOR.

Stipulation III addresses long term management of historic properties, specifying that the BOR and 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 subsequently identified historic properties within the APE. The HPP will incorporate and supersede the Monitoring and Remedial Action Plan and also establishes consultation and coordination procedures, long-term monitoring and mitigation strategies, management mechanisms and goals for long term management of historic properties within the APE. Moreover, the HPP sets forth long-term research goals and domains that form a framework for determining the types of data that should be collected through monitoring, data recovery, and remedial actions, and how these data will be collected in order to address specific research questions. There have been two drafts of the HPP and efforts are currently underway by the BOR to produce a final draft for review by the consulting parties to the PA.

INTEGRATION OF GCMRC AND GCDPA ACTIVITIES CONCERNING CULTURAL RESOURCES

Integration of future GCMRC and GCDPA group activities related to cultural resources is vital in order to efficiently and effectively manage these irreplaceable resources in association with the long-term monitoring of the Grand Canyon. While the ultimate purpose of both programs are directed at common resource management goals and issues, the authorities responsible for implementing them are not identical. Essentially, the cultural resources that are addressed by the GCMRC and the GCDPA can be summarized in two distinct categories:

1. Those properties that are **listed or determined eligible for listing on the National Register of Historic Places**. These are the type of properties that the GCDPA specifically addresses. It is the legal responsibility of the BOR, through the Section 106 process, to ensure that the adverse effects of their operations of Glen Canyon Dam on these properties are considered and appropriately mitigated. This is a responsibility that can not be delegated to any other entity, such as the GCMRC.
2. Those locations and resources that **are not determined eligible for listing on the National Register** under the existing narrowly defined criteria (36 CFR § 60.4). These resources may be of cultural and religious significance to a Tribe, or other groups, and therefore, become an important consideration for the GCMRC cultural resource program. Examples could include plant, animal, or geologic resources. If these resources are not considered eligible historic properties, under the federal regulations, they are not considered within the mandated compliance responsibility of the BOR under section 106 as stipulated within the GCDPA. However, any proposed research or monitoring associated with this category of cultural resources would most likely fall within the purview of the GCMRC's cultural resources program.

The relationship of these two categories of cultural resources should be viewed as complementary. The GCMRC through the Grand Canyon Protection Act and the GCDFEIS and ROD is charged with the long-term monitoring of the natural and cultural resources within the Grand Canyon. It is the responsibility of the Adaptive Management Work Group to provide direction to the GCMRC in implementing it's mission. Within this broader cultural resources arena, however, is the subset of properties that have been determined to be eligible for listing on the National Register of Historic Places and that are therefore subject to additional legislative oversight under the direction of the BOR. While a complementary relationship should

exist for developing broad, long-term management objectives for cultural resources, the protocol for implementing the BOR's specific responsibility for National Register eligible properties has been blurred through the linking of the administration for the GCMRC and the BOR cultural resources programs.

The BOR is solely responsible for maintaining section 106 compliance for all identified National Register eligible properties as stipulated in the GCDPA. The GCMRC or the AMWG have no defined decision-making role with respect to these National Register eligible properties as stipulated in the GCDPA. Operationally, the BOR has been subsuming the funding of the PA activities within the overall budget for the GCMRC, as it had been previously been doing through the Glen Canyon Environmental Studies (a BOR program). It is our position that in principle this is a good approach, because it compels the integration of the GCDPA process into the long-term monitoring activities implemented by the GCMRC and the broader Adaptive Management Program. Additionally, it consolidates the overall program administration and provides a mechanism for the constructive input by GCDPA signatories into the BOR's long term budgeting process.

A potential problem arises when the BOR requests that the GCMRC administer specific GCDPA compliance work. The GCMRC can administer this compliance work in terms of their own internal process including outside peer review and internal review for technical veracity. However, the GCMRC cannot legally or technically comment on whether the resultant work product has sufficiently met the BOR's compliance responsibility under the GCDPA. We view this scenario as potentially placing the GCMRC in an untenable position by administering a portion of a compliance program for which it is not legally responsible. Only the BOR can make the determination of whether a specific work product meets their compliance responsibility under the GCDPA. Further, the AMWG direction may not allow the GCMRC to adequately implement the requirements of the GCDPA.

Integration of the GCDPA compliance work planning process into the long-term budgeting process being developed by the GCMRC and reviewed by the Technical Work Group (TWG) should also be an effective way to alleviate the mutual discomfort currently being experienced by the TWG and the GCDPA signatories. Presently, there is no long-term planning mechanism offered by the BOR to the GCDPA group to develop or comment on the BOR's projected budgets. Historically, the BOR has related to the GCDPA group that there is a determined block of funds for the next fiscal year's compliance work. The GCDPA group has never been provided an opportunity to meaningfully comment on the BOR's compliance work decision for the following year or the adequacy of the allotted funding. By integrating the long-term funding for the GCDPA work within the greater realm of the GCMRC/TWG budgetary discussions several identified issues of concern can be resolved. The integration of these two processes will provide the TWG with the desired opportunity to review the work identified under the GCDPA that is associated with the GCMRC's proposed outyear budgets. Additionally, this will provide the BOR with the much needed meaningful review and comment by the GCDPA group on any projected outyear compliance work requirements and associated funding. This integration, however, will make it incumbent upon the BOR to implement a process, in consultation with the GCDPA group, for producing the projected outyear scopes of work and their associated budgetary needs.

One area in which the GCDPA work fundamentally differs from virtually all other potential tasks conducted in conjunction with the GCMRC's cultural resources program and the associated strategic plan is in the area of remedial/mitigative activities. The need for these types of activities can frequently occur with little advance indication and are necessary for maintaining the BOR's compliance with the GCDPA. Currently, the GCMRC budgeting and RFP process would not allow for an expeditious implementation of a necessary

compliance contract. Following the existing GCMRC procedures, there would be, at a minimum, a year delay between identification of necessary remedial compliance work and implementation of the actual work. This delay could result in significant historic properties being lost, placing the BOR out of compliance with the GCDPA. This type of scenario has potentially serious ramifications for the integrated planning process because some identified adverse effects to historic properties and the necessary remedial actions can not be identified more than a year in advance.

The following is a suggested approach for integrating the GCDPA compliance work with the GCMRC planning and protocol processes. It breaks the cultural resource tasks into three (3) categories, based on the legal responsibilities and the approach for accomplishing the work. These categories are referred to in the next section detailing a proposed annual scheduling cycle.

1) National Register eligible property work identified under the GCDPA

This is work identified by the BOR, in consultation with the GCDPA signatories, that is necessary to maintain compliance with the GCDPA. This work generally includes the routine monitoring and smaller remedial activities carried out by the NPS and tribal participants on National Register eligible properties.

The scope of these monitoring activities generally do not significantly change from year to year and could be submitted to the BOR and incorporated into the GCMRC's planning schedule as other resource program proposals are received, and reviewed by the Technical Work Group.

It must be stressed here that any review comments of the TWG or GCMRC regarding GCDPA work are considered as interested party comments by the BOR. It is ultimately the BOR that decides the appropriateness of the proposed work for meeting their compliance responsibilities under the GCDPA. Additionally, it is not within the authority of the GCMRC to design or require changes to the GCDPA work that the BOR, in consultation with the PA signatories, does not support.

2) GCDPA work associated with National Register properties that are contracted through the GCMRC

Work under the GCDPA, such as large research or mitigative projects, that the BOR, in consultation with the GCDPA signatories, determines could be better implemented through the GCMRC cultural resources program would be forwarded to the GCMRC during the RFP developmental stage.

The BOR, in consultation with the GCDPA signatories, develops the RFP for each specific project to be let and administered by GCMRC.

The BOR, in consultation with GCDPA group, should evaluate the proposals that are submitted to the GCMRC to ensure that they can address and meet the legal compliance needs of the BOR.

If any signatory to the GCDPA group wants to bid on an RFP, they must remove themselves from the RFP development and review roles.

The GCMRC can comment on the technical suitability of the final work product, but it is ultimately the responsibility of the BOR to determine if the final work product meets their legal compliance needs.

3) Work associated with non-National Register eligible cultural resources.

This type of work would follow the GCMRC time-lines and review processes.

Topics for consideration could be developed by the GCMRC based on AMWG needs or could be submitted by an outside group, most likely a tribal organization.

Tribes may have specific monitoring needs regarding cultural resources that currently do not fall within the GCDPA.

PROPOSED SCHEDULING TIMEFRAME FOR INTEGRATION OF THE GCDPA, GCMRC, AND BOR BUDGETING PROCESS

The following proposed scheduling timeframe is designed to integrate annual GCDPA related activities and budgetary requirements with the developing budgeting process of the GCMRC and the BOR. This process is also designed to meet the needs of the BOR's outyear budgeting process. The proposed process will require the GCDPA signatories to initially develop a five year strategic plan for managing register eligible historic properties. There after, the annual budgeting cycle will be derived from the five year strategic plan which will annually be revised and extended an additional year into the future. Essentially, after the initial development of the five year strategic plan future planning activities will only need to add a single new outyear. The following is a brief summary of the scheduling timeframe. Table I presents the GCDPA, GCMRC, and BOR budget development and implementation processes side-by-side for clarification.

- **OCTOBER:** GCMRC: Initiates new projects.
- **DECEMBER:** GCDPA signatories work with the GCMRC to develop RFPs for GCDPA work that has been decided to be contracted through the GCMRC RFP process (**Category 2**).
- **FEBRUARY:** GCDPA signatories in collaboration with the GCMRC finalize the RFPs for PA work to be issued and administered by the GCMRC for the following fiscal year.

GCDPA proposed budget for out year 3 is submitted to the BOR for inclusion in their budget to Congress.

- **MARCH:** On March 1st, GCMRC issues RFPs for the next fiscal year; this includes non-PA cultural resource work initiated by the GCMRC (**Category 3**, in part).
- **APRIL:** BOR submits out year 3 budget to Congress.
- **MAY:** GCDPA signatory work proposals submitted to the GCMRC/BOR for funding the following fiscal year (**Category 1**).

Non-programmatic agreement cultural resource work submitted to the GCMRC for funding the following fiscal year by the participating Native American tribes to meet GCMRC June 1 proposal deadline (**Category 3**, in part). These proposals will follow the GCMRC selection/review process.

- **JUNE:** GCDPA signatories meet to discuss: draft strategic plan for 5 years out, review plan and develop budget and scope of work for 4 years out, finalize budget estimate for out year 3 for submittal to the GCMRC budget planning process which will be incorporated into the BOR's budget submittal to Congress. During this meeting, the GCDPA signatories will also review, refine, and finalize the work plans for outyear 2. At this time, work necessary under the GCDPA for outyear 2 that will be contracted through the GCMRC's RFP process will be determined (**Category 2**). Additionally, Native American tribal planning for non-programmatic agreement activities should be developed at this time for outyear 2.
- **AUGUST:** Draft NPS annual report covering monitoring and remedial activities is distributed for review and comment to the GCDPA signatories. It is at this time that final revisions to the next fiscal years work plan, within the existing budget, may be made based on new information contained in the annual report. Conceivably, this may include such things as reprioritizing specific sites to be monitored or to receive mitigative activities.
- **SEPTEMBER:** NPS monitoring and remedial action annual report is finalized.

DRAFT PROPOSED TIMELINE FOR INTEGRATION OF PA, GCMRC, AND BOR BUDGET PROCESSES

	PA Group	GCMRC	BOR
October		Award contracts	
November		Plan development	
December	Work with GCMRC to develop RFPs for PA work to be contracted through the Center	↓ V	Develop outyear budgets
January		Finalize Plans	
February	-Finalize PA RFPs to be issued by the center for following FY -Submit budget for outyear 3 to BOR		
March		Issue RFPs for following FY (including non-PA cultural work initiated by the Center) - March 1st	
April			Budgets to congress
May	-Submit signatory PA proposals to GCMRC/BOR for funding the following FY -Submit non-PA cultural proposals to GCMRC for funding the following FY		
June	<u>Annual PA meeting to discuss:</u> - Draft budget estimate for outyear 5 - Update budge estimate for outyear 4 - Finalize budge estimate for inclusion in BOR budget to Congress - Discuss work plans for outyear 2; each signatory individually will then develop specific plans for submission to GCMRC/BOR following spring.	Receive proposals for following FY, including non-PA cultural work (likely Tribal) for selection/review process - June 1st	
July			
August	Draft of annual report distributed for review and comment. Final changes to next FY work plans, within existing budget, may be made based on information in annual report.		
September			

Table 1