

**Cultural Resources Task Force Meeting  
February 11-12, 2003  
Prairie Knights Hotel and Casino  
Fort Yates, North Dakota**

**Day 1: February 11, 2003**

**Handouts:**

1. Meeting Agenda
2. Cultural Resources Task Force meeting: Suggestions for Subjects, sites and Ways of Doing Things for Future Cultural Resource Programs of USACE in the Missouri River Basin
3. Fact Sheet: Programmatic Agreement for the Missouri River Main Stem System Operation and Management; Section 106, National Historic Preservation Act (2/7/2003)
4. Programmatic Agreement Process Overview, U.S. Army Corps of Engineers, Omaha District
5. FY 03 (USACE) Program Summary: Cultural Resource Program

**Opening:**

Harold Salway made comments, including Traditional Ground Rules:

- Honor
- Respect yourself
- Respect others
- Integrity
- Represent yourself and tribes with distinction

Harold Salway invited a prayer song and women's prayer.

**Welcome:**

The participants were welcomed on behalf of the Standing Rock Sioux Tribe emphasizing the importance of cultural resource and site protection.

Colonel Kurt F. Ubbelohde of the U.S. Army Corps of Engineers (USACE), Omaha District provided a welcome, emphasizing:

- the useful meetings and consultations to inform the USACE about cultural properties protection;
- assurance of USACE commitment to protecting cultural resources;
- commitment to a collaborative and iterative process in developing plans and programs;
- commitment to USACE listening;
- commitment to practical implementation;

- commitment to cultural site monitoring regimes; and
- the \$3 million USACE proposed budget funding commitment.

He discussed the summaries of themes of the comments on cultural resource protection from the prior meeting (See Handout 2). He emphasized the importance of the anticipated National Historic Preservation Act, Section 106 Programmatic Agreement (PA) for the Missouri River Main Stem System.

Questions and Comments Summary:

- **Training:** USACE Phase II Training is in 12 areas including planning phase, multi-phase, treaty awareness, sacred sites, tribal leadership and government.
- **Consultation Sufficiency:** Concern for pre-decisional USACE planning without sufficient consultation. Need for consultation in this training process.
- **Encampment Training:** Suggestion of tribal training of USACE personnel through an encampment with tribal selection of topics is included as a supplement.
- Request for USACE discussion with tribal people to plan the encampment with a USACE contracted budget.
- **Alternative Procedures:** “Alternative procedures” provide an alternative to Subpart B compliance through a programmatic agreement that incorporates the best current understandings, including tribal understandings.
- **Coordination:** Training arrangements are coordinated by Larry Janis for Ken Cooper in developing general areas of training interest.
- **Continuous Education:** Reminder that a single event is not sufficient for USACE training and there is a need for ongoing, continuous training to change wrong life-long USACE attitudes.
- **Non-tribal Education Elements:** There are important training elements that include the legal and administrative elements from government in addition to tribal expertise.

**Introductions:** David Pearce, Facilitator, Consensus Council, Inc. facilitated the introductions of the participants.

Continued Questions and Comments Summary:

- **PA Uncertainty:** Concern with the broad uncertainty about the meaning of the 1993 programmatic agreement revision or creation of a new programmatic agreement.
- **Tribal Draft PA:** Tribes have drafted a programmatic agreement to be negotiated with USACE, but it has not yet been presented to USACE.
- **Negotiation Participation:** There is a need for SHPOs to be part of the negotiation process for a PA.

- **No Consultation:** Letter read from Standing Rock Sioux Tribe (no handout) asserting that this meeting does not constitute a formal consultation on a PA without a copy of any draft USACE PA for discussion.
- **July 6, 2001:** Discussion of compliance with the 13 points in the July 6, 2001 letter (handout).
- **Consultation Protection:** Concern that there be no compromise of the formal consultation process by this meeting.
- **Consultation Quality:** Meaningful consultation can occur if done properly and continuing, but this consultation must be early, continuous and not responsive to pre-decisional actions and drafts from USACE.
- **PA Uncertainty:** Discussion of two approaches to the PA in the face of confusion:
  - Start the PA process with a blank slate, without reference to the 1993 draft PA.
  - Start with the deficiencies of the 1993 draft PA as a start on preparing a new PA.
- **Tribal Diversity:** Do not homogenize all tribes in this, since they have separate concerns and issues.
- **Bank Erosion:** Concern with erosion of the riverbank destroying cultural sites.
- **Facilitation:** Disagreement with the need for facilitator services and a preference for eye-to-eye consultation among professionals from tribal governments and USACE.
- **Bank Stabilization:** Concerns for stabilization needs to protect against future relocations of communities.
- **Water Quality:** Concerns with tribal drinking water contamination by allowing more boaters.
- **Signatory Clarification:** Discussion of 8-10 USACE-anticipated signatories to the PA, but the other 18 tribes in the Omaha District want participation in the PA. USACE plans that the 18 others sign in another way from the USACE viewpoint. However, all tribes want the same legal status under the PA as full signatories in order to obtain legal standing to enforce the PA in court. One agreement and all tribal signatories.
- **Roaming Tribes:** The fact that tribes historically roamed widely, touching significantly and over long periods many water bodies, as a basis to identify current interests in those water bodies can not be restricted to the geographical area of the present tribal reservations. The U.S. Government also forced the tribal communities to move from water bodies to their current locations, and cannot use that relocation as a reason to deny signatory status to tribes for the PA.

- **Treaties Education:** Ample time is needed to educate the heart about treaties.
- **Cultural Impact Mindfulness:** Discussion of a USACE Fastaband letter (no handout) of the need for mindfulness of cultural impacts of USACE decisions.
- **Meeting Travel Funding:** Concern for adequate USACE funding for tribal representatives to assure equitable participation to attend meetings, particularly when USACE has generated great funding from tribal waters and all tribes are not financially equal.
- **Priorities:** Rejection to USACE priorities that fund bicentennial positions and activities to damage sites while denying funds for site protection.
- **Non-tribal Constituency Involvement Procedures:** Involvement for non-tribal constituencies like SHPOs and advisory councils is essential.
- **Non-tribal Land Coverage:** There is need for non-tribal participants and signatories on the PA so tribal concerns for sites on non-tribal lands are addressed in a coordinated manner.
- **BIA Role:** Concern for unfunded BIA responsibilities for additional tribal lands.
- **Missouri River Task Force:** Concern for the mandate and role of the Missouri River Task Force, which includes four cabinet secretaries.
- **Fear of PA Non-Enforcement:** The failure of USACE to implement the 1993 PA raises reasonable fears of non-enforcement and non-implementation of any new PA and requires extraordinary measures to assure PA compliance.
- **USACE Budget Inadequacy:** Concerns that promised federal funding is lost and planned funding is denied for cultural site protection, leaving a huge gap between promises and resources to meet their promises.
- **USACE Budget Use Fears:** Concern for proper USACE use of current funds to secure implementation of site protection and fears of unnecessary USACE staffing with no site protection benefits.
- **Site Inventory:** Concern for a new site inventory. Sites are being lost daily.
- **Tribes Ahead:** The President Bush emphasis on No Child Left Behind in Education should be expanded to include No Tribe Left Behind.
- **Reciprocity:** Any negotiations must be accomplished among good-hearted equals between governments.
- **Responsibility:** The USACE is accountable for most of the harms to the tribes in the Missouri River basin.

Lunch:

- **Endangered Species:** The USACE should give less concern about endangered species and give more concern to the welfare of tribal communities in the Missouri River basin.
- **Contract Bias:** When there are USACE projects, professional archeologists get all the money on the gravy train and tribes get very little.
- **Shared Resources:** Government and tribal funding should be shared with the local landowners as partial payment for the theft of rights and property in the past.
- **Eliminate USACE:** Eliminate the USACE, because they have failed to fulfill so continuously so many past promises.

**Tex Hall, Chair, Three Affiliated Tribes:** There is no question of the reality of the legal USACE federal trust responsibility and required procedures relating to cultural site protection. There is present uncertainty where the authority lies to develop a PA. The rightful legal authority is at the USACE division level, not the district level. He read a letter (no handout) to USACE requesting to be consulted and to be an integral part of the PA negotiation process at the division level within the USACE. Objection was expressed to the 1993 PA as the model or basis for a new PA. He advocated for approval of USACE sole-source contracts with tribes due to their special expertise, which is provable from the experience of other departments. Major multi-million dollar funding is needed for training and bank stabilization and cultural site protection. Recent tribal resolutions have included recommendations for:

- A USACE Indian Desk within USACE at the national level;
  - A national advisory council for tribal issues at the national level;
  - A USACE Indian Desk at the division level within USACE; and
  - A division-level advisory council for tribal issues.
- **Tribal Expertise:** The tribes have professional expertise related to any PA and should be included in the process.
  - **Frustration and Anger:** Tribal representatives want the USCE to know of, and feel, their deep and abiding anger and frustration in the past and present relationship with the USACE.
  - **Consultation Progress:** USACE consultation efforts reflect USACE intent and commitment to improvement. Provide the tribes with the authority to show what consultation is in reality. Let the tribes on the Mni Sose tribal list come together and set the standard for consultation as a service to USACE, which does not understand what consultation is.
  - **Consultation Planning:** Concern that there is no strategic plan within USACE for development of a PA. These meetings are repetitive.
  - **Budget Planning:** The planning for the USACE budget is present and will be presented in Day 2.

- **Pre-decision Planning:** There should be no USACE planning for a PA until all tribes are consulted in advance.

**Programmatic Agreement Process Overview:** Todd E. Skoog, Lt. Colonel, U.S. Corps of Engineers, Deputy District Engineer

Goal: To share with the group the process that was followed to obtain participation of interested parties.

- See the Handout No. 4
- USACE described the USACE past process toward a PA in meetings in June, August (tribally led) and October (tribally led), 2002, a December (tribally led), 2002 Tribal Working Group meeting, a tribal chairman's meeting, meetings with individual tribal councils and the February 11-12, 2003 meeting.
- Tribal representatives and members feel they are denied opportunity to be consulted about a PA.
- USACE anticipates receiving the current tribally-generated draft PA for future discussion.
- Future USACE consultation process planned includes drafting a PA, a tribal chairman's meeting and a Tribal Council/THPO Cultural Resource Staff meeting looking toward a PA in June, 2003.

Comments and Suggestions:

- **No Draft PA:** Objection to any USACE attempt at preparing a PA document as a basis for consultation. Alternatively, ask tribes to help draft the document.
- **Past Deception:** USACE has been deceptive in the past and present and needs to be honest with tribes, whereas the tribes have been completely honest and forthright with the USACE..
- **Allotee Representation:** BIA is only representative of allottees in a PA negotiation, not tribes.
- **Tribal PA Draft:** The contents of the draft PA (no handout) were developed by tribes at the meetings listed above. Three Affiliated Tribes is not the author for the draft PA.
- **Bad Relationship:** USACE is an octopus that is doing bad things to tribal communities, stealing from those communities and polluting the river enough.
- **Relationship Improvement:** There is much improvement in the relationship with USACE and tribes since 1982.
- **In-stream Lands:** Pursuant to the Missouri riverbed lands Section 359 transfer of tribal lands prohibits building, and no abdication of leasehold rights and never been paid, seeing:
  - Seeks an appraisal since 1958 for mineral rights from river acreage;
  - With compounded interest; and
  - Additional compensation for being in the priority military zone.

- **Shared Information:** Tribal leaders need to share information with succeeding generations.
- **Shared Proposals:** All the tribes should be here at this meeting with a full and comprehensive proposal for a PA for negotiation with USACE.
- **Stagnation:** These meetings are stagnating in repetition from meeting to meeting. We need to move forward to arrive at a PA.
- **Draft PA:** Prepare a draft PA for a basis for consultation to move these meetings forward to a conclusion.
- **Rejected PA:** Tribes understand that USACE has already rejected the tribally prepared PA (no handout) or has only agreed to treat it as input into a PA.
- **Conference Calls:** Include tribal THPOs in any conference calls of USACE with SHPOs, because SHPOs are political appointees of governors.
- **THPO Necessary Signatures:** USACE needs THPO signatures on any PA and these will be denied unless fully consulted.
- **New PA:** Portions of the 1993 draft PA can be brought forward into a new PA with co-management.
- **Tribal PA:** The USACE should receive the tribally-developed PA as a gift for co-management.
- **June, 2003 PA Goal:** The June, 2003 USACE goal for a signed PA is flexible and only a benchmark.
- **Monitoring:** Confusion among jurisdiction of federal agencies for enforcement must be clarified in a partnership between tribes and USACE, both of whom have jurisdiction for cultural site protection.
- **Federal Deficiency:** USACE is not the only deficient federal agency in consultation with tribal government.
- **Tribal PA Delivery:** The tribally-developed PA that is in process of consensus among the tribes, will be presented to USACE when it is ready and that will take more time.
- **Respect:** Tribes must demand respect at the highest level in PA negotiations.
- **Senior Ownership:** Tribes are the senior owners of the water, above the federal and state governments.

**Follow-up for Day No. 2:**

- Tribal representatives will meet regarding the tribal draft PA at 8:00 am-9:00 am on February 12.

**Day 2: February 12, 2003**

**Opening:**

Harold Salway facilitated prayers and messages to start the discussion.

**Remarks:**

David Pearce summarized the work on Day No. 1.

**Morning Meeting Report:**

The earlier private meeting of tribal representatives regarding the tribal draft PA took place and was satisfactory to the participants. There was no substantive report from group. No tribal draft PA is currently available.

**Documentation:**

The summary of this meeting will be sent by email to participants on 2/12/03. Postal copies will be sent to those participants with postal addresses, but without email addresses available.

**\$3 Million Site Protection Status Report:** (See Handout No. 5)

The report on budget development includes:

- Reflects a six-fold increase in resources for cultural site protection
- Funding allocated from the USACE District for 2003 and 2004

Comments and Suggestions:

- **Signage:** There is no tribal consultation on signage to date and there have been requests from sovereign nations for such consultation and participation in signage content.
- **Protection:** There is a lack of USACE clarity regarding the definition of "protection" projects. *(USACE will provide a definition to all participants in a separate document.)*
- **Photographs:** Photograph protection projects cover agency photographs, not tribal photographs.
- **White Swan:** White Swan funding is included over two fiscal years.
- **Budget Breakdown Request:** A specific budget is requested of the \$3 million breakdown. *(USACE will provide a copy to all participants in a separate document.)*
- **Master Manual:** The Master Manual does not include cultural site protection funding even though the Manual also causes the deterioration of the cultural sites and there is need to coordinate the Manual's implementation impacts and funding for cultural site protection.
- **WAPA Discussions:** The Power Marketing Agreement discussion with WAPA is uncertain. *(USACE will provide the participants with a summary of the status of these discussions.)* Seek allocation of a percentage of WAPA income to tribal cultural site protection.
- **Legal Requirements:** \$300,000 uses are unclear. *(USACE will provide a copy of these costs to all participants in a separate document.)*

- **Unforeseen:** Funding is requested for unforeseen problems that is separate from the \$3 million, so that the current \$300,000 can be placed back into other protection projects. Legal should have its own separate budget for its expenses.
- **Mitigation:** PA language should address the funding mechanism for resolving adverse effects. Entitlement is necessary to assure compliance.
- **Timing:** There are great savings in early site protection implementation now, rather than later mitigation, which will be much more expensive.
- **Uncertainty:** There was objection to the lack of USACE 's specific detailed information on the cultural site protection program for presentation today.
- **Long-term Funding:** There is an important strategic need for including current funding in a long-term congressional funding program.
- **Other Program Funding:** Other bank erosion stabilization funding or recreational funding should be used flexibly to do cultural site bank erosion stabilization.
- **Title 6 Responsibilities:** USACE is responsible for implementation of protection of tribal efforts on state lands to protect sites under Title 6. *(USACE will check to determine whether it is releasable and then, if it is releasable, the Title 6 responsibilities legal opinion will be provided to participants.)*
- **EIS in Title 6:** What is the status of the EIS under Title 6?
- **Ignorance:** USACE is ignorant of its own Title 6 process.
- **Title 6 PA Scope:** The USACE intends that there is to be one PA, and it will include Title 6 components. However, there is uncertainty about the inclusion of Title 6 in the scope of the anticipated PA.
- **Manual Tribal References:** There is uncertainty about tribal references (including treaties) in the Master Manual.
- **Assurance:** The USACE fails to keep its faith with tribes and spends time only talking at meetings with no follow-up.
- **Enforcement Delegation:** The tribes should have delegated authority from USACE and BIA to enforce site protection through a clear, formal legal agreement, and there should be a clear arrangement for enforcement jurisdiction between the BIA, USACE and state agencies.
- **Salary and Travel:** USACE should identify how much of the \$3 million has been spent on USACE staff salaries and staff travel *(USACE will provide a copy to all participants in a separate document.)*
- **Prosecution:** There are uncertain and deficient teeth for punishment of site protection violations depending on which law enforcement jurisdiction is involved.
- **Law Enforcement Jurisdiction:**

#### Short Summary Comments:

- Communication is deficient.
- A paradigm shift by USACE is necessary to assure communication and to avoid military thinking.
- The tribal-developed PA draft is a good idea.
- Tribes want co-management of cultural site protection.
- We want pre-decisional consultation on everything that impact sites.
- We want sites as part of USCE purpose and priority level.
- We want funding resources for federal responsibility is essential.
- The USACE must avoid divisive tactics among tribes.
- The USACE staff inserts itself in tribal politics.
- We are appreciative of budget information presented.
- We wanted pre-decisional consultation on how the \$3 million was to be spent. Reminder that tribes got the funding through tribal advocacy.
- We appreciate the USACE statement that the 1993 PA is dead.
- We appreciate USACE recognition of tribal draft of PA, but the tribes needs more time before the draft PA will be completed and shared.
- We want the next meetings to be facilitated by Mni Sose.
- We appreciate non-defensiveness and listening by USACE.
- These meetings are repetitious.
- The June, 2003 PA goal date is unrealistic.
- The USACE should formally repudiate the June, 2003 PA goal date.
- Each tribe has specific Section 106 issues, in addition any joint tribal documents, to be added to any consultation on a PA.
- These are good meetings and helpful.
- The USACE should not discount and discredit tribal oral history in legal proceedings. Oral history cannot be discounted.
- This is uplifting to see tribal voices at the same level as the USACE.
- Tribes are senior owners to the Missouri River water due to treaties and the Winters doctrine.
- The USACE does not fulfill promises of USACE staff to tribes in meetings like this.
- Federal legislation does not amend treaties.
- The model of the long-term BIA TPAs should be paralleled with a USACE TPA process.
- Tribes can never trust the federal government and its treaties.
- All the tribes are to be included in all Missouri River discussions.
- We appreciate the hosting of Standing Rock Sioux Tribe and praying elders and Harold Salway and facilitators at this meeting.
- There are no apologies for the expressions of tribal frustration with USACE during this meeting.
- All the \$3 million is being absorbed within USACE staff positions and its consultants.

- The USACE lands are not USACE lands, but tribal lands occupied by USACE.
- We appreciate USACE recognition of the tribal draft PA.
- I admire the uniform, but USACE is oppressing us.
- BIA boarding school experience and experience with off-limits Native American bars during military service were part of the experience of oppression of tribal people, which affects tribal attitudes toward federal agency actions today.
- The experience of state condemnation of tribal lands affects tribal attitudes to other agency actions.
- Promises have been unfulfilled in the past, including free electricity, that increases our frustration.
- I respect you personally, but do not respect what you represent and what you do and don't do.
- This is a meeting opportunity and USACE attention to be used and USACE has provided this meeting opportunity.
- Venting through words is good and discussion to set direction is even better.
- The USACE has been cooperative in implementation of projects on Lake Sharp.
- Tribal communities should move from rhetoric to actions, recognizing the rotation of federal agency personnel.
- Tribal communities must join together under real leadership.

**Closing Prayer:**

The meeting concluded with requested sung prayers and statements by elders.