

**Cultural Resources Task Force Meeting  
Discussion Summary  
Radisson Hotel  
Bismarck, North Dakota  
June 20-21, 2002**

**Day 1: June 20, 2002:**

**Proposed Meeting Goal- Day 1:**

1. To identify suggestions for:
  - subjects;
  - sites; and
  - way of doing thingsfor future cultural resource programs of USACE in the Missouri River Basin.
2. To identify working group participation for June 21.

**Reminders for Discussion:**

1. It is your conversation
2. No relevant topic is excluded.
3. No discussion is ended.
4. Avoid interruptions.
5. Keep the recorder accurate.
6. Use gentle candor.
7. Respect time.

**Suggestions for Subjects, Sites and Ways of Doing Things for Future Cultural Resource Programs of USACE in the Missouri River Basin**

1. Address bank stabilization (rip rap) to protect cultural sites on tribal lands.
2. Exercise honesty and humility in dealings with tribes.
3. Affiliated Tribes have interests in sites in South Dakota.
4. Protect non-Indian lands and Indian lands equally.
5. Assure opportunities for tribal involvement in discussion and planning for cultural resource site preservation.
6. Clarify the Fort Randal cemetery situation.
7. Recognize cultural incompetence and insensitivity.
8. There is substantial confusion over USACE cultural resource programs.
9. A slush fund is needed to address cultural resource issues that is permanent and constant, up to \$25 million.
10. There is a problem of high administrative costs in appropriated funding for cultural site programs.
11. Recognize the effect of the almighty dollar value over spiritual values in this culture.

12. Understand the benefits of designating Indians as endangered species, for protection of their nesting areas, flyways and habitat.
13. Consider tithing for the salaries of all USACE employees for cultural resource site preservation programs.
14. Listen carefully to tribes.
15. Honor authority, particularly spiritual authorities.
16. Clarify whether burial sites will be treated as Section 106 sites.
17. WAPA should provide funding for cultural resources programs.
18. Protect all remaining cultural sites.
19. Consider the Bonneville Dam as a model for a WAPA approach to supporting cultural site preservation.
20. Provide a forum for tribes to meet with WAPA about cultural site preservation.
21. Train tribal people for the most effective monitoring and enforcement tasks for preserving cultural sites.
22. Set clear time schedules for program results.
23. Recognize the threat of looters coming with the Lewis and Clark centennial tourist influx and provide help to tribes to protect cultural sites.
24. Seek WAPA funding of cultural site preservation programs.
25. There is a need for monitoring of USACE personnel who loot sites.
26. There is a need for careful trust-building process steps between USACE and tribes.
27. Organize training for tribal members for the most effective monitoring, preservation and interpretation of cultural sites.
28. Gestures for trust between USACE and tribes should include completion of the full inventory cultural sites.
29. Improve notice and communication with tribal representatives to include sending of meeting summaries and attendee lists to all tribes, earlier notice of meetings and notice to more tribal representatives (Game and Fish and cultural preservation officials) than tribal chairs
30. to assure effective communication and meeting attendance.
31. Communicate effectively with USACE cultural liaison officers to customize any consultation to meet the standards of each tribal culture.
32. Tribal silence toward USACE meeting invitations should generate USACE renewed communication efforts with telephone callbacks.
33. Similar meeting notice and communication problems are faced by non-tribal cultural resource constituencies, i.e. SHPOs.
34. Prepare and use a master mailing and telephone list for all cultural resource constituencies.
35. Avoid the use or interpretation of any meetings as signifying (false) concurrence by tribes in subsequent USACE decisions. Avoid later USACE claims of any meeting as a "consultation" when it was not clearly agreed as a consultation at the time of the meeting.

36. Develop an accountability mechanism for assuring the credibility among tribes for USACE actions (i.e. perhaps through the BIA).
37. Governance within any working groups needs clarification and should be democratic.
38. Clarify the decision role of any working groups in the USACE decision processes so there is no misunderstanding.
39. Clarify the difference between formal consultation and informal information gathering processes.
40. Clearly separate any working group role from customized, formal tribal consultation processes. Use written confirmation and clarification to avoid misunderstandings.
41. Customize the formal tribal consultation process with each tribe.
42. Recognize the tribal fear of further tribal losses in informal conversation processes that are misused.
43. Protect and preserve all significant sites.
44. Recognize the difficulty for tribes in deal with the problem of turnover of USACE personnel and USACE policy changes when combined with the lack of specific results of USACE cultural resource programs.
45. Recognize the legacy of lack of trust between USACE and tribes.
46. Recognize that practical follow-through and results are essential for building trust with tribes.
47. There is a role for both large group and small group meeting formats in developing good relationships.
48. Reconsider and reject cost-share programs for tribes with in USACE programs.
49. Bring all working group reports back to the larger group ( in order to provide continuity over time).
50. Participation in working groups should be self-selecting and voluntary by tribal participants.
51. Accurate and prompt recording and reporting of meetings is essential for building trust.
52. Link effectively anything done within the cultural resources program to the USACE tribal liaison program.
53. Clarify the role of the states in the USACE cultural resource program in order to avoid serial fights over the same issue.
54. USACE coordinating liaison with county government and tribes is essential for site protection enforcement.
55. Clarify standard timelines and limits for periodic USACE reporting (4-6 months), especially to tribal councils regarding cultural resource program progress.
56. Clarify jurisdictions and coordinated roles among agencies to assure firm federal enforcement of site protection.

57. Clarify that the USACE cultural resources programs are conceptualized for the entire Missouri River basin.
58. Work in this meeting in a whole group, not breakout groups, on June 21.
59. Organize mechanisms and funding (set aside funds) to deal with emergency cultural site situations (i.e. fluctuating water levels that expose or erode sites).
60. Plan long-term funding. Two-year funding cycles are inadequate for site preservation programs.
61. Recognize that agreements need real cooperation and funding for successful implementation.
62. Clarify the USACE meaning of "consultation."
63. Clarify "trust responsibility" as it applies to cultural resource programs.
64. Establish a clear protocol in advance of contacting tribes for dealing with a site, including adequate advance notice of visits (differing for regular situations and emergency situations) and in advance of any tribal consultation. Apply a "no surprise" policy.
65. Clarify a mutual USACE/tribal protocol for "consultation" so that anything else is not misinterpreted as consultation. Use draft Department of Defense guidelines as a starting point for developing such a protocol for an effective, mutual consultation process. This will avoid past misunderstandings.
66. Recognize the potential benefits of a Memorandum of Understanding or Memorandum of Agreement between tribes and USACE, which can remove the fussing over procedural issues and focus funds and efforts on practical results. Use the existing NDIRC MOU for remains disposition as a model.
67. Institute cultural awareness training programs for USACE staff (with special emphasis on respect).
68. Clarify in writing what USACE understands as "consultation."
69. Describe clearly how much of the Missouri Basin is included in the cultural resources program.
70. Clarify the procedure and protocol for handling "inadvertent discoveries."
71. Undertake immediately a both-shore mutual (USACE and tribes) Missouri River site identification inventory of all cultural sites.
72. Respect delayed reflective thinking and summarization by tribal representatives.
73. Recognize the reality of cultural insensitivity, cultural blindness, misused cultural pre-competence, cultural incompetence and misuse of cultural interpretation.
74. Establish an oppression awareness education program for USACE staff.
75. Recognize that each tribe is at a different level of thinking regarding cultural resources and necessary processes for their protection.
76. Recognize the technique of inducing "contract competition" among tribes for funds, which is divisive.
77. Communicate all meeting summaries by mail and electronic copy to those with e-mail addresses.

**Decision:** the discussion on planned subjects on June 21 will be conducted as a meeting of the whole, not as break-out groups.

**Day 2: June 21, 2002**

**Meeting Goal:**

Based on the group decision on Day 1, the Day 2 format will be a Whole Group Meeting to discuss the following three priority focal subjects of USACE:

1. Cultural Resources Programmatic Agreement (including Section 106);
2. Cultural Site Monitoring and Environment; and
3. Cultural Resources Program;

and to identify other subject of importance to the participants.

**General Procedure Schedule:**

The USACE will follow the following general schedule:

1. June 20-21, 2002: General Meeting on the Cultural Resource Program in Bismarck, ND.
2. Followed by the development of three Working Groups during the period June 21 - February 10, 2003:
  - a. Working Group on a Cultural Resources Programmatic Agreement.
  - b. Working Group on Cultural Site Monitoring and Enforcement
  - c. Working Group on the Cultural Resources Program
3. February 11-12, 2003 General Meeting on the Cultural Resource Program in Rapid City, SD
4. Followed by tribal consultations
5. Followed by USACE decisions

**General Discussion:**

- a. The importance of USACE development of cultural sensitivity.
- b. Fear by tribes of faith betrayal, based on past experience.
- c. Danger of heart break.
- d. Funding is important to implementation.

**Working Group on a Cultural Resources Programmatic Agreement:**

The following suggestions were made to contribute to the discussion of the Working Group on a Programmatic Agreement:

1. How are we going to fund the implementation?
2. The 1993 Programmatic Agreement needs to be revised to include the tribes.
3. The 1993 Programmatic Agreement looks like it is designed to protect the Nation as a whole, and not Indian People.
4. Should the Programmatic Agreement include general or detailed provisions?
5. Include a dispute resolution process within the Programmatic Agreement.
6. The Programmatic Agreement should be customized for particular areas of the Missouri River.
7. Add a prescribed burn procedure to protect cultural sites.
8. Customize the Programmatic Agreement for individual tribes.
9. Address vandalism procedures.
10. Define a framework for communications regarding cultural resources.
11. Address special priority cultural site stabilization projects as identified by tribes.
12. Maintain a mechanism for an ongoing discussion process to assure the mutual benefits of the Programmatic Agreement for the tribes and USACE and to avoid the problems with the 1993 Programmatic Agreement.
13. Determine if it will be mutually beneficial to have one agreement for all tribes or 27 agreements (one for each tribe) or six agreements (one for each reservoir area).
14. How are the tribes to operate inside this Programmatic Agreement regarding:
  - a. Human remains procedures (Suggestion to adopt or adapt the NDIRC MOA/MOU with the USACE Omaha District);
  - b. Water pool levels to protect burial sites; and
  - c. Endangered species procedures?
15. Identify the problems with 1993 Programmatic Agreement.
16. Describe the relationship of the Programmatic Agreement to the Master Manual.
17. Address general public education about cultural resources.
18. Define jurisdictional issues, so that final authority is clarified.
19. Include cultural resource management plans in the Programmatic Agreement.
20. Address access to USACE procedures.
21. Address right-of-way to USACE land procedures.
22. Address the ownership of the cultural sites.
23. Customize the tribal contact procedure to meet the needs of individual tribes.
24. Provide for customized site-monitoring procedures to address erosion problems.
25. Provide for contact procedures for all tribes.
26. Include shared inter-tribal assistance procedures.
27. Include site survey procedures.

28. Address the discovered human remains procedure in the circumstance when the tribal affiliation identity is uncertain.
29. Be sensitive to the differences in each tribe's procedures.
30. Address the procedure for the selection of the location for reburial of human remains.
31. Recognize a single grave or cemetery as a sacred site, even if not included in Section 106.
32. Address the procedure for termination of the agreement.

**Process for Establishing the Working Group on a Cultural Resources Programmatic Agreement:**

Volunteers to Participate in the Working Group:

- a. Elgin Crows Breast, Three Affiliated Tribes
- b. Dennis King, Oglala
- c. Paige Hoskinson, SD-SHPO
- d. Fern Swenson, ND SHPO
- e. Margie Nowick, ACHP

**Agreement:** There was agreement that Three Affiliated Tribes will sponsor a meeting among all tribes, which is set for August 6-7, 2002 in Fort Berthold.

**Host:** Austin Gillette

**Moderator:** Woody Corbine

**Invitation:** All tribes in the Missouri River basin

**Invited Observer:** USACE

**Agenda:**

- a. Programmatic Agreement
- b. Cultural Site Monitoring and Enforcement

This meeting will serve in place of the first meeting of the Working Group on a Cultural Resources Programmatic Agreement and the Working Group on Cultural Site Monitoring and Enforcement.

**Working Group on Cultural Site Monitoring and Enforcement:**

The following suggestions were made to contribute to the discussion of the Working Group on Cultural Site Monitoring and Enforcement:

1. All tribes want to be contacted if a grave is discovered.
2. Find a solution to the lack of USACE arrest authority. Possible arrest authority placement could be with the BIA, Fish and Wildlife Service or the FBI.
3. Link enforcement to monitoring.
4. Address tribal reporting procedure for looting incidents to USACE.

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5. Address the use of tribal personnel (who are more sensitive and knowledgeable) in the USACE monitoring role, in a cooperative relationship with USACE. (Tribes still need the assistance of the Corps for monitoring.)
6. Develop an agreement with U.S. Park Service, which is alleged to be cooperating and protecting looters.
7. Address looter hot pursuit coordination procedure.
8. Address the assurance of agency coverage service for looting reporting on Saturdays.
9. Address enforcement jurisdiction on transferred lands (to the state).
10. Develop a cross-deputization agreement for enforcement effectiveness.
11. Provide for joint enforcement officer training.
12. Address tribal contact options and procedures.
13. Address recognized points of accountability for enforcement cases, to meet the tribal need to know the follow-through on enforcement cases.
14. Address public education.
15. Provide for a single enforcement reporting 1-800-number.
16. Address the procedure for reporting back to the tribes regarding enforcement follow-up on criminal incidents.
17. Recognize the benefit of tribal monitoring inputs for dealing with encroachments and erosion identification procedures.
18. Clarify the relationship of cultural resources to Title IV.
19. Suggest a possible August 6-7, 2002 meeting agenda expansion to include cultural site monitoring and enforcement.
20. Address the regular notification and updates to tribes of river enforcement case disposition procedure.
21. Address procedures for exchanging information between law-enforcement agencies, including tribal, BIA, Park Service agencies.
22. Clarify arrest authority on USACE lands.
23. Address funding for implementation of cultural resource projects.
24. Address funding of these important meeting processes for the USACE Cultural Resources Program.
25. Address the general and continuing funding for the monitoring and enforcement process.
26. Provide for a negotiated funding mechanism, through a Memorandum of Agreement, for funding of monitoring and enforcement consultation meetings.

**Process for Establishing the Working Group on Cultural Site Monitoring and Enforcement:**

Volunteers to Participate in the Working Group:

- a. Ione Gayton , Standing Rock

**Agreement:** There was agreement that Three Affiliated Tribes will sponsor a meeting among all tribes, which is set for August 6-7, 2002 in Fort Berthold.

**Host:** Austin Gillette

**Moderator:** Woody Corbine

**Invitation:** All tribes in the Missouri River basin

**Invited Observer:** USACE

**Agenda:**

- a. Programmatic Agreement
- b. Cultural Site Monitoring and Enforcement

This meeting will serve in place of the first meeting of the Working Group on a Cultural Resources Programmatic Agreement and the Working Group on Cultural Site Monitoring and Enforcement.

**Working Group on the Cultural Resource Program:**

The following suggestions were made to contribute to the discussion of the Working Group on the Cultural Resource Program:

1. Tribal input is essential for assuring that funding is applied to priority cultural resource issues.
2. Four major priorities were identified that should be blended for programmatic funding by the Cultural Resources Program
  - a. Cultural site stabilization process;
  - b. Comprehensive cultural site inventory completion;
  - c. Monitoring of cultural sites; and
  - d. Cultural awareness training (including cultural and spiritual values) for USACE and Cultural Resource Program personnel
3. Develop a complete mechanism for providing notice of meetings and proposals to tribes.
4. Clarify the conference call notice process and procedures.
5. Provide procedures for input from non-tribal constituencies.
6. Provide for input to the 2003 and 2005 federal budgets for USACE cultural resource programs.
7. Recognize tribal caution in disclosure of rites, sites, rituals and personal meanings of the cultural heritages.
8. Accelerate the completion of the Title VI lands survey consultation.
9. Provide for ethno-botanical and ethno-archeological education programs for tribal members:
  - a. Linked with college credits;
  - b. Developed in working relationships with colleges; and
  - c. Developed in cooperative programs between colleges.
10. Address USACE interaction with other Federal agencies (e.g. BIA).
11. Develop reciprocal USACE/tribal staff visits and exchanges.

12. Explore tribe-to-tribe training on cultural resources programs.
13. Develop a para-professional cultural resources program.
14. Strengthen USACE funding for tribal archeological offices.
15. Complete the White Swan national registry evaluation.

**Other Subjects of Importance to the Participants:**

For other subjects of importance to the participants, reference was made to the Day 1 discussion. Further discussion was postponed to the February 10-11, 2003 General Meeting on the USACE Cultural Resources Program.

**Process for Establishing the Working Group on Cultural Site Monitoring and Enforcement:**

- a. Due to the small number of remaining participants, USACE tabled the completion of the Cultural Resources Working Group discussion until the next General Meeting (February 10-11, 2003).
- b. USACE Cultural Resources Program will invite all tribes to participate in conversation to develop USACE Cultural Resources Program budget priorities. Please contact Larry Janis.

**Attendance:** The contact information on meeting participants are included in the attachment to this summary.

**Corrections:** The facilitation of this meeting was provided by the Consensus Council of Bismarck, ND. The facilitation team included David Pearce, Sharon Vogel and Larry Spears. Please forward any corrections for accuracy or completeness of this summary to Larry Spears, Executive Director The Consensus Council, Inc., 1003 East Interstate Avenue, Suite 7, Bismarck, North Dakota 58503-0500, Tel: 701-224-0588 ext. 103, Fax: 701-224-0787, Email: ndcc@agree.org, Web Site: www.agree.org