

Chapter 4 CONSULTATION AND COORDINATION

4.1 Agency Consultation

4.1.1 Consulting Agencies

In a September 19th, 2005 letter, Reclamation formally invited the NPS and BIA to be consulting parties under Section 106 of the National Historic Preservation Act of 1966 (NHPA), implementing regulations (36 CFR 800). Both agencies subsequently expressed a desire to be consulting parties. Reclamation has consulted with the Fort Hall Business Council and the Shoshone-Bannock Tribal Land Use Commission about the bank stabilization project. Tribal consultation is addressed under Section 4.2.

On several occasions, Reclamation has met with the SHPO and provided them with details of the project. A letter was received from the SHPO indicating they have no objection to Reclamation substituting the NEPA process for the Section 106 review process for the present undertaking. The ACHP was invited to participate in the consultation under 36 CFR 800 regulations, but officially declined that invitation.

Other agencies such as the NRCS have taken an active role in seeking solutions to protect the Landmark. The NRCS prepared a demonstration project plan for bank stabilization which was used by the Tribes, BIA, and Reclamation upstream of the Landmark in 2001 and 2002. The Corps has jurisdiction over the navigable waters of the United States and as such reviews any 404 permits for stabilization work on the Snake River. Reclamation consulted with these agencies and other Federal and local agencies throughout the process to gather valuable input and to meet regulatory requirements. Since the proposed action would occur on Tribal lands, it is unlikely any local planning or zoning ordinances would apply. State involvement would include the SHPO.

4.1.2 National Historic Preservation Act of 1966

The NHPA, as amended, requires that Federal agencies consider the effects that their projects have on historic properties. Section 106 of this Act and its implementing regulations (36 CR Part 800) provides procedures that Federal agencies must follow to comply with NHPA on specific undertakings. The Act requires Federal agencies to consult with SHPO, Native American tribes with a traditional or culturally-significant religious interest in the study area, and the interested public. Federal agencies must identify historic

properties in the area of potential effect for a project. The significance of historic properties must be determined, and the Federal agency must mitigate adverse effects the project may cause on significant resources.

Section 800.6 of the 36 CFR 800 regulations requires agencies to notify the ACHP and invite their participation for any undertakings that have an adverse effect upon a National Historic Landmark. Section 800.10 directs agency officials, to the maximum extent possible, to undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. Section 800.10 also directs agencies to notify the Secretary (through NPS) of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect.

Under Section 101(d)(2) of the NHPA, Indian tribes have an opportunity to assume all or any part of the functions of a SHPO in accordance with specific procedures outlined in the Act. The tribal official who has assumed responsibilities of the SHPO for Section 106 compliance on tribal lands under Section 101(d)(2) of NHPA, is referred to as the Tribal Historic Preservation Officer (THPO). The Tribes have not assumed the responsibilities of the SHPO for Section 106 compliance on tribal lands, and do not have a formal designated THPO. Therefore, under the 36 CFR 800 regulations, Reclamation must consult with a representative designated by the Tribes, in addition to the Idaho SHPO, during review of the present bank stabilization undertaking.

Reclamation has collected existing cultural resource information from Class III inventories, photo-interpretive mapping, archaeological testing, GPR surveys, and historic documents to prepare the draft EA and to facilitate subsequent compliance with the NHPA. Coordination with the Idaho SHPO and other relevant agencies and organizations will occur in conjunction with public review of the draft EA. It is understood that specific, future undertakings not related to the present stabilization project will require separate consultations with the SHPO and the Tribes pursuant to the 36 CFR 800 regulations.

4.1.3 Archaeological Resources Protection Act (ARPA)

The Archaeological Resources Protection Act (ARPA) of 1979, as amended, insures the protection and preservation of archaeological sites on Federal and Indian land. ARPA requires that Federal permits be obtained before archaeological resource investigations can begin on Federal or Indian land. If a permit issued may harm an archaeological resource, the Federal land manager, before issuing such permit, must notify the Indian tribe which may consider the site as having religious or cultural importance. The Act provides for civil and criminal penalties for unauthorized removal and collection of archaeological resources.

4.1.4 Native American Graves Protection and Repatriation Act (NAGPRA)

Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 regulates tribal consultation procedures in the event of discoveries of Native American graves and other NAGPRA “cultural items.” The Act requires consultation with tribes during Federal project planning if graves and other NAGPRA cultural items might be discovered. NAGPRA details procedures for repatriation of human skeletal remains and other cultural items with appropriate tribes.

4.1.5 Endangered Species Act (1973) Section 7 Consultation

The Endangered Species Act (ESA) requires all Federal agencies to ensure that their actions do not jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat. The evaluation of endangered species contained in this EA serves as Reclamation’s biological assessment as required under the ESA. It evaluates impacts on listed and candidate species, including the gray wolf (experimental, non essential), the bald eagle (threatened), Utah valvata snail (endangered), and Ute ladies’-tresses (threatened). Reclamation has proposed mitigation measures to avoid long-term impacts on bald eagles, Utah valvata snail, and Ute ladies’-tresses. It was determined that the Preferred Alternative would not have long-term negative impacts on these species. Therefore, Alternative 2, the Preferred Alternative, has an ESA determination of May Affect, Not Likely to Adversely Affect. In a letter dated May 2, 2007, USFWS concurred with Reclamation’s determination (see Appendix F in the Final EA).

There are no ESA-listed anadromous fish known to occur within the study area; therefore, Reclamation does not need concurrence from NOAA Fisheries; however, a copy of the Final EA will be distributed to the agency.

4.2 Tribal Coordination and Consultation

In accordance with 1501.6 of NEPA, an invitation to be a cooperating entity was mailed to the Tribes on September 8, 2005.

4.2.1 Government-to-Government Consultation with Tribes

Reclamation has worked closely with the Fort Hall Business Council, the Tribal Land Use Commission, and the Tribal staff to develop alternatives for the Landmark stabilization. Several meetings were held with Tribal representatives to receive input (see Appendix B – Tribal Consultation). A copy of the draft EA was provided to the Tribes for additional data,

discussion, and comment prior to release to the public. The representatives that will receive the draft EA are listed in Appendix C.

Since the proposed project area is on Tribal lands, none of the action alternatives can be implemented without a resolution from the Business Council to allow Reclamation to construct on Tribal land. Additionally, Reclamation would need BIA concurrence.

4.2.2 Indian Sacred Sites (Executive Order 13007)

Reclamation has discussed the Landmark bank stabilization proposal with representatives of the Shoshone-Bannock Tribes. Tribal representatives have been given opportunities through site visits and meetings to provide comments about Indian sacred sites that might be located in the project area. Although such information is not always disclosed by the Tribes for reasons of sensitivity, Reclamation would consider that information if it were provided by the Tribes.

4.2.3 Indian Trust Assets (ITAs)

All of the proposed stabilization alternatives would occur on Tribal lands and could impact Tribal resources and/or Indian Trust Assets. See Section 3.10 for a discussion regarding ITAs.

4.2.4 Other Laws and Regulations

The relationship between Federal agencies and sovereign Tribes is defined by laws, regulations and Executive Orders addressing the requirement of Federal agencies to notify or consult with Native American groups or otherwise consider their interests when planning and implementing Federal undertakings. These mandates are included as Appendix D.

Furthermore, since the proposed project site is located on Reservation lands, Reclamation cannot implement any of the bank stabilization alternatives without the approval of the Fort Hall Business Council.

4.3 Public Involvement

Reclamation has involved numerous agencies in discussions regarding protection of the Landmark that has been discussed throughout the draft EA. Several site visits occurred with the Tribes and agencies, including one on October 24, 2005. In September 2005, the NEPA scoping process was initiated by sending letters to Federal, State and local agencies, congressional representatives, and individual landholders along the Snake River.

Additionally, a news release was provided to the Sho-Ban News. Copies of the letters and news release can be found in Appendix A.