



— BUREAU OF —
RECLAMATION

Reclamation Implementation of the National Historic Preservation Act (NHPA)

April 2026

Discussion Draft – Subject to Change

Agenda

- How Reclamation's mission intersects NHPA
- NHPA aspects that are "inherently governmental" under law & regs
- NHPA functions that can be conducted by non-federal entities
- Main takeaways



Reclamation's mission and NHPA

- Reclamation mission is construction oriented
- Issuing use authorizations
- Compliance concurrent with NEPA
- Nexus: Lands, permits, funds
- "Inherently governmental" roles



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Regs/Statute – "Inherently Governmental"

- 36 CFR Part 800.2(a) Federal agency official responsibilities.
 - § 800.2(a)(1) Federal agency responsible ensures all actions taken by employees or contractors meet Secretarial professional standards.
 - § 800.2(a)(3) Federal agency may use services of applicants, consultants, or designees to prepare information, analyses and recommendations but remains legally responsible for all required findings and determinations.
 - § 800.2(a)(4) Federal agency shall involve the consulting parties in findings and determinations.

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Regs/Statute – Inherently Governmental, con't

- § 800.2(c)(2)(ii) Federal agency is required to consult with any Indian Tribe that attaches religious or cultural significance to historic properties that may be affected by an undertaking, regardless of the location of the historic property.
- § 800.2(c)(2)(ii)(A) Federal agency ensures Indian Tribes have a reasonable opportunity to identify its concerns, advise on identification and evaluate historic properties, articulate its view on undertaking, and participate in resolution of adverse effects.
- § 800.2(c)(2)(ii)(C) Consultation shall be sensitive to concerns and needs of Indian Tribes.



Regs/Statute – Inherently Governmental, con't

- § 800.2(d)(1) Federal shall seek comment and consider the views of the public and (2) provide the public with information about an undertaking and its effects on historic properties.
- § 800.3 Agency official shall determine if action is an undertaking (§ 800.16(y)) and if there is potential to cause effects on historic properties.
- § 800.3 Agency official shall consult with the Council (AChP), the National Conference of State Historic Preservation Officers, or individual State Historic Preservation Offices/Tribal Historic Preservation Offices (SHPO/THPO), as appropriate, and Indian Tribes...in the development of alternate procedures...



Working with SHPOs

- SHPOs have statutory authority and an explicit role under Section 106 of the Act
- SHPOs have explicit authority and role under federal regulations 36 CFR part 800
- Capacity limitations in SHPO offices can be a factor
- Funding limitations in SHPO offices can be a factor
- Disagreements over "historic" or "significant" can be a factor
- The 'work rate' of local, state and federal entities varies widely, which can result in mis-matched expectations and conflict



Working with SHPOs (cont'd)

- Build Trust – Reclamation and Water Districts.
- Consult early (30% design).
- Report undertakings to SHPO for concurrence (60% design + full footprint).
- Reclamation determines and SHPOs concur on effects to 'historic properties'.
- SHPO has 30 days for review by statute.
- If adverse effect: mitigation consultation/implementation after review.
 - Typically 6 months for negotiating mitigation document.



NHPA functions that can be conducted by non-federal entities

Proponents should have contractors help with non-governmental actions.

- **Possible Contractor efforts - in consultation with Reclamation**
 - Ensure complete project footprint is known and talks to Reclamation early.
 - Background research (Class I efforts)
 - Field investigation (Class III efforts)
 - Reporting with recommendations of effect (Reclamation makes determinations)
 - Mitigate adverse effects (after required Reclamation consultation efforts)
 - Prepare administrative/consultation letters (less common: Reclamation must send)



Streamlining

- Within the regulatory compliance framework of Section 106 (54 USC 306108), Reclamation welcomes NHPA streamlining efforts to help accommodate stakeholder needs and reduce bureau staff burden.
- As applicable, Reclamation uses Program Alternatives
 - Programmatic Agreements
 - Program Comments (existing)



Programmatic Agreement Stats

- Reclamation currently has 30 active PAs
 - Focused on projects, programs, and statewide.
 - Some of the PAs include other federal and state agencies in addition to Tribes, State Historic Preservation Officers (SHPOs), and the ACHP.
 - Bureau CRM staff are currently working on developing additional PAs - mostly statewide PAs that include more than one region.



Programmatic Agreement Stats, con't

- Lessons Learned - Info from UCB on Statewide PAs
 - Engage with SHPO early (2-3 meetings) prior to any public meetings.
 - Initial public outreach can include hundreds of people and/or organizations; generally, only a fraction of those will come to public meetings.
 - Set separate meetings with Tribes (286 Tribes across all Reclamation states).
 - Meet once a month to work through PA with interested parties.
 - Signing the PA could take two months.
 - Overall time to negotiate: 10-16 months.
 - Statewide agreements are tailored to concerns of an individual state.



Utah Statewide Programmatic Agreements

- Reclamation has worked to build trust with the State of Utah SHPO (Dr. Chris Merritt).
- Minor action PA
 - Exemptions from SHPO review for minor actions.
 - If it falls under the exemption, then no SHPO consultation needed; add to annual report.
 - Similar to CO, NM, and WY statewide PAs.
 - Examples: Replace non-historic or install new pipelines, cables, culverts, headgates in previously disturbed areas, or place/replace riprap.
- Programmatic Mitigation for Water Infrastructure
 - If mitigation needed, contribute to Utah State University's water heritage program. Defined costs. Similar to NM.
 - In CO and WY contribute to 'irrigation wikipedia'.
 - Other States – Depends on Trust and Circumstances



Program Comment Attempt

- **2018-2020 Reclamation's Program Comment effort**
 - From September 2018 to October 2020, Reclamation worked towards a bureau-specific Program Comment on water infrastructure.
 - ACHP did not recommend that Reclamation move forward with the Program Comment effort until further engagement in developing robust public input and broader consultation with stakeholders was completed.



Program Comment, con't

- There are existing Program Comments that Reclamation may use
 - Certain Housing, Building, and Transportation Undertakings
 - Reclamation began using the PC, specifically aligning with Appendix A, on 6/20/2025.
 - A formal notice by Reclamation to ACHP was required prior to use.
 - Denver office provided a training fact sheet and flow chart to Reclamation CRM staff on utilizing the PC.
 - The first six months of use was relatively small, with six exemptions across all regions, but we anticipate use by the bureau increasing as staff becoming more comfortable with it.



Tribal Consultation Volume and Tracking

- Tribal Consultation (Native American and International Affairs Office)
 - FY2025, reporting tracked three consultations (tracking changed in 2022)
 - FY2020, reporting tracked 842 consultations with 129 tribes
 - FY2018, reporting tracked 969 consultations* with 172 tribes
- California-Great Basin example of all consultations for FY24
 - Approximately 125 Projects with consultations associated with them (including PAs).
 - Includes 865 entries of consultation (SHPO, Tribal, Other Consulting Parties)
 - Adverse effects – no new determinations
 - Consultations on four existing



National Historic Preservation Act Citations

- National Historic Preservation Act ([54 USC 306108](#))
- Implementing Regulations: [36 CFR Part 800](#)
 - [Regulations: 36 CFR Part 800](#) Protection of Historic Properties will be revised as agreed by the ACHP during the 2/12/2026 ACHP [Business Meeting](#).
 - Next Council Business Meeting is scheduled for 6/4/2026.
- Reclamation Directives and Standards
 - [LND 02-01](#)
 - [LND 02-03](#)



Main Takeaways

- Reclamation understands challenges with implementing NHPA
- Reclamation is using available tools to streamline (Program comments, programmatic agreements, non-federal documents)
- Other entities besides Reclamation have roles in NHPA compliance (SHPO, ACHP, Agencies, Tribes, etc.)
- Those roles in NHPA are governed by law, regulations, and the realities of agencies' budget and staffing constraints
- Reclamation welcomes other ideas/thinking



Main Takeaways (cont'd)

- Your project is one of many projects this year in each Area Office
- Reclamation's autonomy on NHPA is limited
- Staffing is a very real concern for Reclamation
- What other tools/approaches can stakeholders suggest?



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