

**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 these two programs be integrated at a level that prevents a duplication of effort, both scientifically and logistically, and maximizes the shared information potential.

The purpose of this discussion paper is to present a proposed process 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 (Council) 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 Council. 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 Council. 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 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 for dealing with the treatment of historic properties. Stipulation I recognizes that there are at least a total of 323 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 263 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 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 other input by

Tribes when appropriate. On the basis of the information provide in these reports, the next fiscal years 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 incorporates 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 PA 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 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 properties are specifically the type with which the GCDPA is concerned. It is the responsibility of the BOR to ensure that the adverse effects of their operations of Glen Canyon Dam on these properties are 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 specific plant, animal, or geologic resources. Because these resources are not considered eligible historic properties, under the federal regulations, they are not considered within the mandated

compliance responsibility of the BOR 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 GCDEIS/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 its mission. Within this broader cultural resources arena, however, is also the subset of properties that have been determined to be eligible for listing on the National Register. While this complementary relationship is important for developing broad, long-term management objectives for cultural resources, the question of the Bureau of Reclamation's responsibility often becomes blurred through the recent implementation of these two cultural resource programs.

The BOR is solely responsible for maintaining compliance for all identified National Register eligible properties as stipulated in the GCDPA. The GCMRC or the AMWG have no defined 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, and previously through the Glen Canyon Environmental Studies. 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 makes sense in terms of consolidating 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.

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 the opportunity to review and comment on specific work identified under the GCDPA that is associated with the GCMRC's proposed out year budgets. Additionally, this will provide the BOR with the much needed meaningful review and comment by the GCDPA group on any projected out year compliance work requirements and associated funding. This integration, however, will make it incumbent upon the BOR to develop a process, in consultation with the GCDPA group, for producing the projected out year scopes of work and their associated budgetary needs.

One area in which the GCDPA work significantly differs from most of the 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. Typically, there would be a year delay between when the necessary compliance remedial work was identified and when the actual work could be accomplished. This long of a delay could result in significant historic properties being lost, placing the BOR out of compliance with the GCDPA. This type of scenario has 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 process with three (3) components for integrating the GCDPA compliance work with the GCMRC planning and protocol processes:

#### 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 individual tribal monitoring activities, 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 review comments of the TWG 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.

- If remedial activities are known at the time of proposal submission, they can be included in the work plans. Otherwise, they will be provided following the time-lines specified in the Monitoring and Remedial Action Plan which includes the development of proposals in August-September and specific work tasks at least 30 days prior to implementation of the work.

## **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 achieved through the GCMRC cultural resources program could 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 and forwards the RFP to the GCMRC.
- The BOR, in consultation with GCDPA group, should evaluate the proposals that are submitted to the GCMRC to ensure that they meet the 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 or could be submitted by an outside group, most likely a tribal organization.
- Tribes may have specific monitoring needs for cultural resources that currently do not fall within the GCDPA.